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STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0018

Rick T. Carlson,
Relator,

vs.

Upsala Public Schools,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed December 16, 2008
Affirmed
Kalitowski, Judge

Department of Employment and Economic Development
File No. 11020 07

Rick T. Carlson, 3338 50th Avenue, Holdingford, MN 56340-9540 (pro se relator)

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Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Bjorkman, Judge.

U N P U B L I S H E D   O P I N I O N

KALITOWSKI, Judge

Pro se relator Rick T. Carlson challenges the decision by the unemployment law judge that he is ineligible to receive unemployment benefits, pursuant to Minn. Stat. § 268.085, subd. 7(a) (Supp. 2007), because he was a school employee whose subsequent employment was not substantially less favorable than the employment of the prior academic term. We affirm.

D E C I S I O N

Relator contends that the unemployment-law judge (ULJ) erred in determining that because relator had a reasonable assurance of employment with Upsala Public Schools during the 2007-2008 academic term that was not substantially less favorable than his school employment during the 2006-2007 academic term, Minn. Stat. § 268.085, subd. 7 (a) (Supp. 2007), precluded any use of wage credits for unemployment benefit purposes between academic terms. We disagree.

In reviewing the decision of the ULJ,

> The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:
>
> (1) in violation of constitutional provisions;
> (2) in excess of the statutory authority or jurisdiction of the department;
> (3) made upon unlawful procedure;
> (4) affected by other error of law;
> (5) unsupported by substantial evidence in view of the entire record as submitted; or
> (6) arbitrary or capricious.

Minn. Stat. § 268.105, subd. 7(d) (Supp. 2007); *see Ywswf v. Teleplan Wireless Servs. Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007) (applying this standard).

Under Minn. Stat. § 268.105, subd. 7(d)(5), the court of appeals may reverse or modify the ULJ's findings or inferences if they are "unsupported by substantial evidence in view of the entire record as submitted." This court views the ULJ's factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted). In doing so, we will not disturb the ULJ's factual findings when the evidence substantially sustains them. *Id.*

The ULJ properly found that Minn. Stat. § 268.085, subd. 7(a), bars relator from receiving unemployment benefits.

The ULJ determined relator was ineligible for unemployment benefits because relator had reasonable assurance of employment with a school during the 2007-2008 academic term that was not substantially less favorable than his school employment during the 2006-2007 academic term. Relator argues that the ULJ erred in concluding that relator's subsequent employment after the 2006-2007 school year was not substantially less favorable. Relator also contends that he did not receive a reasonable assurance that his subsequent employment would not be substantially less favorable.

Minn. Stat. § 268.085, subd. 7, applies specifically to school employees. Subdivision 7 states in relevant part:

> (a) No wage credits in any amount from any employment with any educational institution . . . earned in any capacity may be used for unemployment benefit purposes

> for any week during the *period between two successive academic years* or terms if:
>
> (1) the applicant had employment for any educational institution . . . *in the prior academic year* or term; *and*
>
> (2) there is a *reasonable assurance* that the applicant will have employment for any educational institution . . . in the *following academic year* or term, unless that subsequent employment is substantially less favorable than the employment of the *prior academic year* or term.
>
> . . . .
>
> (k) A "reasonable assurance" may be written, oral, implied, or established by custom or practice.

Minn. Stat. § 268.085, subd. 7 (emphasis added).

Relator has been employed as a custodian for the Upsala Public Schools educational institution since August 1994. Thus, he qualifies as a "school employee" for purposes of section 268.085, subdivision 7, and the ULJ properly applied the statute here.

Minn. Stat. § 268.085, subd. 7, applies when a benefits applicant was employed by an educational institution in the prior academic year. In the academic term of 2006-2007, prior to the filing of his benefits claim, relator worked 40 hours per week for Upsala Public Schools. Relator now claims that Upsala Public Schools did not give him a "bona fide" assurance that his employment in the upcoming 2007-2008 academic term would not be substantially less favorable. But Minn. Stat. § 268.085, subd. 7 (a) (2), does not require that an assurance be "bona fide," rather it requires that the assurance be reasonable. Here, prior to filing a benefits claim with the Minnesota Department of Employment and Economic Development, the acting superintendent assured relator that he would be able to return to full-time work for the 2007-2008 academic term.

Moreover, relator had worked full time during the academic year for over a decade and relator admitted that the superintendent made oral statements to relator that he would return to a regular, 40-hour schedule after the school year started. Thus, substantial evidence supports the ULJ's finding that relator received a "reasonable assurance," as required by Minn. Stat. § 268.085, subd. 7 (a) (2), that he would be similarly employed in the 2007-2008 academic year.

Minn. Stat. § 268.085, subd. 7, does not permit the decision-maker to include wage credits from the entire calendar year in its analysis.

This court reviews issues of statutory construction de novo. *Bukkuri v. Dep't of Employment & Econ. Dev.*, 729 N.W.2d 20, 21 (Minn. App. 2007). When interpreting a statute, we first look to see whether the statute's language, on its face, is clear or ambiguous. *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation. *Id.* (quotation omitted). An attempt to circumvent the plain meaning of the statute under the guise of statutory construction is impermissible. *Swanson v. Indep. Sch. Dist. No. 625*, 484 N.W.2d 432, 434 (Minn. App. 1992). We are not at liberty to construe a statute if its terms speak for themselves. *Id.* (citation omitted).

Minn. Stat. § 268.085, subd. 7 (a), states that for school employees applying for unemployment benefits, the pertinent time frame is the "academic year or term." The statute does not permit a decision-maker to consider a calendar year when determining wage credits. Consequently, when deciding whether a school employee's subsequent employment is substantially less favorable, the decision-maker must comply with the

statute and look solely to the work performed during the prior academic year and not the prior calendar year.

This court has previously addressed this issue and held that a former year-round school employee was ineligible for unemployment benefits between academic terms once she received reasonable assurance of reemployment in the upcoming school year. *Swanson*, 484 N.W.2d at 434. In *Swanson* we determined that the statute[1] plainly states that a school employee is ineligible to receive unemployment benefits for any week which commences during a period between two successive academic years if the employee has received a reasonable assurance of reemployment in the upcoming year. *Id.*

Following *Swanson*, we conclude that section 268.085, subdivision 7 (a), unambiguously states that the relevant time frame in analyzing whether a school employee's subsequent employment is substantially less favorable is the prior academic year, not the prior calendar year.

Relator's employment for the 2007-2008 academic year is not substantially less favorable than his employment during the 2006-2007 academic year.

Relator claims that his employment during the 2007-2008 academic year is substantially less favorable than his employment during the 2006-2007 academic year because it does not include the summer hours that he worked. But this contention is based on a calculation that includes the hours he worked for the 2006-2007 calendar year,

[1] The statute in question in *Swanson* was Minn. Stat. § 268.08, subd. 6 (a) (Supp. 1991), which has since been renumbered as section 268.085, subd. 7 (a) —the statute at issue in this case. The provisions are substantively similar.

rather than the hours he worked during the academic year. *See* Minn. Stat. § 268.085, subd. 7 (a).

Substantial evidence supports the ULJ's finding that relator's subsequent employment is very similar to the prior year and not substantially less favorable. Relator's work hours decreased slightly during the 2007-2008 academic year from the previous academic year, but he does not challenge this. In the 2007-2008 academic year, he worked at least 32.5 hours per week, as compared to 40 hours per week during the 2006-2007 academic year. This constitutes a reduction of 7.5 hours, or less than 20%. The ULJ properly found that this reduction was not "substantial" for purposes of section 268.085. And relator does not claim that this 7.5 hour per week reduction is substantial. Relator's complaint is based solely on the ULJ's refusal to include the summer hours relator worked, which were reduced in 2007. But this complaint has no merit because the language of the statute states that a school employee is ineligible to receive wage credits for any week during the period between two successive academic terms if the applicant has received a reasonable assurance of reemployment in the following academic term, unless that subsequent employment is substantially less favorable. Minn. Stat. § 268.085, subd. 7(a). Because we conclude that relator is a school employee and received a reasonable assurance of reemployment in the 2007-2008 academic term that was not substantially less favorable, we conclude that the ULJ properly refused to grant wage credits to relator for his summer hours worked.

Relator's claim that a coworker in similar circumstances received benefits.

Relator alleges that a coworker received the same reduction of hours, was approved for benefits by the department, and has not been denied those benefits. However, neither party to this controversy has presented any evidence about the coworker's employment with Upsala Public Schools, including whether the individual has actually been awarded wage credits, or whether Upsala Public Schools or the department has appealed any such award. Thus, relator's allegations regarding the coworker are not properly before us.

In conclusion, because the record supports the ULJ's finding that relator's employment for the 2007-2008 academic year is not substantially less favorable than his employment during the 2006-2007 academic year, we affirm the decision that Minn. Stat. § 268.08, subd. 7, bars relator from receiving unemployment benefits.

Affirmed.