STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0206

In the Matter of the Eligibility of

Ted Johnson for MSRS General Employees Retirement Plan Coverage.

Filed October 25, 2021
Affirmed
Jesson, Judge

Minnesota State Retirement System
File No. 520822117

Ted A. Johnson, Falcon Heights, Minnesota (self-represented relator)

Keith Ellison, Attorney General, Kristine K. Nogosek, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Larkin, Judge; and Bratvold, Judge.

SYLLABUS

Under the plain language of Minnesota Statutes section 352.01, subdivision 2b(6)(iii) (2020), which excludes certain temporary employees from the definition of "state employee" for purposes of eligibility for the Minnesota State Retirement System General Plan, the phrase "for a definite period not to exceed six months" does not apply to temporary employees in the classified service in the executive branch.

OPINION

JESSON, Judge

After his employment as a temporary classified worker for the state extended beyond six months, relator Ted Johnson asked respondent Minnesota State Retirement

System (MSRS) if he was now eligible for the state's general retirement plan. He was not eligible, the MSRS replied, interpreting the state's retirement statute to exclude Johnson's type of employment. Johnson appealed, arguing that the governing statute should be interpreted to include all employees for the state who work longer than six months. Following a final determination by the MSRS board that he was not eligible for the general retirement plan, Johnson seeks our review by writ of certiorari. We affirm.

FACTS

Relator Ted Johnson was hired as a full-time, classified, temporary employee for the Minnesota Department of Education.[1] Johnson's term was from September 10, 2018 to March 30, 2019. His employment was later extended through July 2, 2019.

A month before his employment was scheduled to end, Johnson contacted MSRS to ask whether he should have been eligible to contribute to the MSRS General Employees Retirement Plan (general retirement plan), the defined-benefit pension plan administered by MSRS.[2] MSRS informed Johnson that temporary classified employees—including Johnson—were not eligible for the general retirement plan because they did not meet the

[1] The primary differences between classified and unclassified employees are in hiring and firing. Classified employees are hired through a competitive examination process and can be dismissed only for just cause. Minn. Stat. § 43A.33 (2020). Unclassified employees are generally elected or appointed individuals in professional, supervisory, or managerial positions. *See* Minn. Stat. § 43A.07-08 (2020) (defining classified and unclassified positions).

[2] A defined-benefit pension plan is a retirement plan that provides a specific monthly amount at retirement that is "defined" by a formula based on a contributor's salary. Minn. Stat. § 352.04 (2020).

statutory definition of "state employees" in Minnesota Statutes section 352.01, subdivision 2b(6)(iii).

Johnson appealed,[3] and the MSRS Board of Trustees (MSRS board) referred the matter to the Minnesota Office of Administrative Hearings for a fact-finding conference before an administrative-law judge (ALJ). On cross-motions for summary disposition, the ALJ recommended that the MSRS board uphold the executive director's decision, concluding that Johnson was not eligible from the general retirement plan. At their following meeting, the MSRS board considered the ALJ's recommendation, and it heard presentations from MSRS staff and Johnson. The MSRS board, as the final decision-maker, adopted the ALJ's recommendation and denied Johnson's appeal.

Johnson filed a petition for a writ of certiorari with this court.

ISSUE

Was the MSRS board's determination that Johnson was not eligible for the general retirement plan based upon an improper interpretation of the exceptions in Minnesota Statutes section 352.01, subdivision 2b(6)(iii)?

[3] Johnson appealed the staff decision to the MSRS Executive Director, arguing that because his position was extended beyond six months, he should be considered a "state employee" under Minnesota Statutes section 352.01 (2020), and not a temporary employee. But the executive director determined that Johnson did not meet the definition of "state employee" based on the exceptions listed in Minn. Stat. § 352.01, subdivision 2b(6)(iii). Johnson then appealed the executive director's determination to the MSRS board.

ANALYSIS

Johnson challenges the MSRS board's decision as based on an erroneous interpretation of the state retirement statutes. Statutory interpretation is a question of law that we review de novo. *City of Oronoco v. Fitzpatrick Real Est., LLC*, 883 N.W.2d 592, 595 (Minn. 2016). And our objective in statutory interpretation is to determine the intent of the legislature. *State v. Riggs*, 865 N.W.2d 679, 682 (Minn. 2015). The first step in statutory interpretation is to determine whether the statute's language is ambiguous. *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017). If the legislature's intent is clearly discernible from plain and unambiguous language, statutory construction is not necessary, and we instead apply the statute's plain meaning. *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). When determining whether a statute is ambiguous, we construe words and phrases according to accepted rules of grammar. Minn. Stat. § 645.08(1) (2020). But where a statute is ambiguous, we defer to a reasonable interpretation by an agency charged with administering that statute. *A.A.A. v. Minn. Dep't of Hum. Servs.*, 832 N.W.2d 816, 823 (Minn. 2013).

To examine whether the disputed language is, indeed, plain, we turn to the language of the retirement statutes. The general retirement plan is available to every person who is a "state employee as defined in [Minnesota Statutes] section 352.01." Minn. Stat. § 352.02, subd. 2 (2020). The definition of "state employee" in section 352.01 sets up two categories of people: those included in the retirement plan (subdivision 2a), and those excluded from it (subdivision 2b). As relevant here, subdivision 2b(6)(iii) excludes from the definition of state employees eligible for plan participation

> persons who are employed . . . by the executive branch as a temporary employee in the classified service or as an executive branch temporary employee in the unclassified service *if appointed for a definite period not to exceed six months*, and if employment is less than six months, then in any 12-month period[.]

(Emphasis added.)

Here, it is undisputed that Johnson was hired as a temporary classified employee. And the statute excludes such "temporary employee[s] in the classified service" from the definition of a "state employee" qualifying for the general retirement plan *unless* the phrase "if appointed for a definite period not to exceed six months" applies to these individuals. Which brings us to the crux of this case: does the six-month limitation apply only to the group of temporary employees in the unclassified service (the set of employees described immediately before the phrase in question), or does it apply to temporary employees in *both* the classified and unclassified service?

To answer this question, we look to the plain language of the statute, construing the words according to accepted rules of grammar. One such rule provides that a limiting phrase "ordinarily modifies only the noun or phrase that it immediately follows."[4] *State v. Stay*, 935 N.W.2d 428, 432 (Minn. 2019). This rule "reflects the basic intuition that when a modifier appears at the end of a list, it is easier to apply that modifier only to the item directly before it." *Ryan Contracting Co. v. O'Neill & Murphy, LLP*, 883 N.W.2d 236, 244 (Minn. 2016) (quotation omitted). Utilizing this rule of grammar here, the "six months" limiting phrase modifies only the second half of the

[4] In grammatical terms, we refer to this as the last-antecedent rule.

excepted-employee phrase, or "executive branch temporary employee[s] in the unclassified service." Thus, under this grammatical rule, the plain language of this statute is unambiguous. And the "six months" phrase is not meant to apply to classified employees, such as Johnson.

This plain-language interpretation is bolstered by the use of the word "appointed" in the critical phrase "if *appointed* for a definite period not to exceed six months." Minn. Stat. § 352.01, subd. 2b(6)(iii) (emphasis added). Appointment—as opposed to gaining a position through a competitive process—is a hallmark of the unclassified service. *See* Minn. Stat. § 43A.08 (defining unclassified employees as including those "*appointed* to fill an elective office" (emphasis added)). Unlike unclassified employees, who are either elected or appointed, a classified employee like Johnson would not be appointed. Accordingly, applying the plain language of the statute, the MSRS board did not err in determining that Johnson is not eligible for the general retirement plan.

To convince us otherwise, Johnson argues that we should view the statutory language through the lens of a different grammatical rule—one designed to clarify the understanding of listed words or phrases in a statute.[5] This rule provides that "when there is a straightforward, parallel construction that involves all nouns or verbs in a series, a prepositive or postpositive modifier normally applies to the entire series." *In re Est. of Pawlik*, 845 N.W.2d. 249, 252 (Minn. App. 2014) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 147 (2012)), *rev. denied* (Minn.

[5] In grammatical terms, this is referred to as the series-qualifier rule.

June 25, 2014). Johnson asserts that the phrase "if appointed for a definite period not to exceed six months," is a "postpositive modifier" that applies to both classes of employees. We disagree. Here, subdivision 2b(6)(iii) does not include a list of parallel nouns or verbs. There is no "series" to be found. Rather, the statute includes two distinct descriptive clauses. *See Pawlik*, 845 N.W.2d at 251-52 (utilizing this rule in analyzing a list of possible beneficiaries in the statutory definition of "interested person" for probate matters).

Comparing the rule as Johnson proposes side by side with our statutory analysis further demonstrates the statute's plain language. Using brackets, our application is illustrated as:

> "State employee" does not include: . . . (6) persons who are employed: . . .
>
> (iii) [by the executive branch as a temporary employee in the classified service] or [as an executive branch temporary employee in the unclassified service if appointed for a definite period not to exceed six months, and if employment is less than six months, then in any 12-month period][.]

Minn. Stat. § 352.01, subd. 2b(6)(iii) (internal brackets added).

In contrast, Johnson's interpretation is demonstrated as follows:

> "State employee" does not include: . . . (6) persons who are employed: . . .
>
> (iii) [by the executive branch as a temporary employee in the classified service or as an executive branch temporary employee in the unclassified service] [if appointed for a definite period not to exceed six months, and if employment is less than six months, then in any 12-month period][.]

Id. (internal brackets added). Because it naturally divides the clauses around the conjunction "or," applying the "six months" language to only unclassified employees is the more natural—indeed, plain—reading of the statute.[6]

Johnson also argues that the statute is ambiguous because there is no distinction between a "state employee" eligible for the general retirement plan in section 352.01 and an "employee of the state" eligible for deferred compensation benefits under Minnesota Statutes section 352.965, subdivision 2 (2020). While these terms may appear to be contradictory, these phrases are from different statutes and are applied to different benefits. These separate definitions have no bearing on one another.[7]

Finally, Johnson challenges the MSRS board's interpretation as violating legislative intent, which Johnson asserts, is to allow all state employees to participate in the state retirement system. But we need not address legislative history where the statutory language is plain. *State v. Asfeld*, 662 N.W.2d 534, 541 (Minn. 2003). And we observe that Johnson's summary of legislative intent is inconsistent with the legislature's decision to specifically exclude some of those employed by the state from the general retirement plan.

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[6] Notably, there is no comma separating any of the phrases. In the presence of a comma, the qualifying phrase—here the "six months" phrase—would apply to all preceding phrases. *State v. Khalil*, 956 N.W.2d 627, 635 (Minn. 2021). Without the comma, we would not read the first phrase—the "temporary employee in the classified service" phrase—as modifying the "six month" phrase. This means that temporary classified employees are exempt, regardless of how many months they worked.

[7] Johnson also contends that the MSRS board should not be afforded deference because they have never explained an interpretation of this specific statute in any other written memo or letter, meaning they are not educated on the topic. Because subdivision 2b(6)(iii) is unambiguous, we do not need to reach this argument. *See A.A.A.*, 832 N.W.2d at 823.

DECISION

Because the plain language of the phrase "for a definite period not to exceed six months" in Minnesota Statutes section 352.01, subdivision 2b(6)(iii), shows that it does not apply to persons employed by the executive branch who are classified as temporary employees, Johnson is not eligible to participate in the general retirement plan.

Affirmed.