This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1363

Samiira Husein,
Relator,

vs.

University of Minnesota,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed July 25, 2022
Affirmed
Jesson, Judge

Department of Employment and Economic Development
File Nos. 46325059-1, 46325059-2, 46325059-3

Thomas C. Atmore, Martin & Squires, P.A., St. Paul, Minnesota (for relator)

University of Minnesota, Minneapolis, Minnesota (respondent employer)

Munazza Humayun, Anne B. Froelich, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Reyes, Presiding Judge; Jesson, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Appellant Samiira Husein worked for respondent University of Minnesota as a community advisor while she was an undergraduate student, including during the 2020-21

school year. She was offered the same position for the 2021-22 school year when she expected to begin graduate school. She applied for unemployment benefits for the summer months between school years. But respondent Department of Employment and Economic Development (DEED) determined that she was ineligible for benefits.

Husein appealed to an unemployment law judge (ULJ) who, following a hearing, affirmed DEED's determination that under Minnesota Statutes section 268.085 (2020), an employee of an educational institution is not eligible for benefits between two successive school terms. Husein filed a request for reconsideration, arguing that the ULJ should have considered a second university job (a tech-support position) she held in the 2018-19 and 2019-20 school years but lost due in March 2020 to the COVID-19 pandemic. Following the ULJ's order of affirmation, Husein petitioned a writ of certiorari from this court. Because the plain language of Minnesota Statutes section 268.085, subdivision 7, considers only positions held between two successive school terms, we affirm.

FACTS

Husein is a student at the University of Minnesota. The U of M's academic calendar year runs roughly from September to May. While an undergraduate student, Husein held two university jobs. The first was a job as a part-time community advisor[1] starting in January of the 2018-19 academic calendar year. She continued in this position for the 2019-20 year and was offered the same position for the 2020-21 year. The second job was a part-time tech-support position. She held the tech-support job during the 2018-19 and

[1] Equivalent to a "resident advisor" position.

2019-20 academic calendar years, but her employment ended due to COVID-19-related financial complications in May of 2020. Both positions were paid through wage credits, which amount to $13 an hour, although the pay from the community advisor position directly funded tuition and room and board. Starting after the onset of the COVID-19 pandemic, community advisors were paid an additional $20 per shift as a form of hazard pay. This increase amounted to an additional $200 monthly for Husein.

Following her discharge from the part-time tech-support job, Husein applied for and received unemployment benefits. She collected benefits until June 2021, when DEED issued a determination of ineligibility, stating that under Minnesota Statutes section 268.085 (benefits-eligibility statute), Husein was not eligible for benefits for the weeks between the 2020-21 and 2021-22 academic years.

Husein appealed, and an evidentiary hearing was held before a ULJ on June 29. At the hearing, Husein and the U of M assistant director of human resources (assistant director) testified. Husein testified that she worked two jobs—tech support and community advisor—but lost the first job due to the COVID-19 pandemic. Husein explained that she was offered a position for the 2021-22 school year as a community advisor again, but had not decided if she would take it at the time of the hearing. Her pay would remain the same, but the U of M was no longer going to be paying the $20 per shift hazard pay. The assistant director testified only about the community advisor positions in the 2020-21 and 2021-22 academic years.

The ULJ issued its findings of fact and a decision on July 1, 2021, affirming DEED's determination of ineligibility. The ULJ explained that, because Husein worked solely as a

community advisor in the 2020-21 academic term and was offered the same position for the 2021-22 academic term, subdivision 7 of the benefits-eligibility statute prevented her from receiving benefits for the weeks between academic terms. *See* Minn. Stat. § 268.085, subd. 7(a). The ULJ also determined that the exception in the benefits-eligibility statute for "substantially less favorable employment" was not met by the elimination of the $20-per-shift hazard pay.

Husein filed a request for reconsideration, explaining that the tech-support position is the only position that should have been considered because the community advisor position "is not and has never been a source of income."[2] The ULJ filed an order affirming the July 1 decision as factually and legally correct.

Husein petitioned for writ of certiorari.

DECISION

I. The ULJ properly interpreted the benefits-eligibility statute.

The first issue is whether the ULJ erred in interpreting the benefits-eligibility statute. On review of a ULJ's decision, this court can reverse or modify a ULJ's decision if the appellant's rights were prejudiced because the decision was affected by an error of law. Minn. Stat. § 268.105, subd. 7(d)(4) (2020). We review de novo a ULJ's interpretation of unemployment statutes and "the ultimate question whether an applicant is eligible to receive unemployment benefits." *Menyweather v. Fedtech, Inc.*, 872 N.W.2d 543, 545 (Minn. App. 2015).

[2] Husein is not making this same argument on appeal.

The goal of statutory interpretation is to effectuate the intent of the legislature. *Svihel Vegetable Farm, Inc. v. Dep't of Emp. & Econ. Dev.*, 929 N.W.2d 391, 394 (Minn. 2019); *see also* Minn. Stat. § 645.16 (2020). When the language of a statute is clear, this court will enforce that plain language without looking further. *Engfer v. Gen. Dynamics Advanced Info. Sys., Inc.*, 869 N.W.2d 295, 300 (Minn. 2015). Words and phrases should be construed "according to rules of grammar and according to their common and approved usage." *Rodriguez v. State Farm Mut. Auto. Ins. Co.*, 931 N.W.2d 632, 634 (Minn. 2019) (quotation omitted).

With this standard in mind, we turn to the statutory language. The benefits-eligibility statute includes special provisions for employees of educational institutions. Minn. Stat. § 268.085, subd. 7. Those employees cannot use their wage credits as a basis for receiving unemployment benefits during breaks between academic years *if* they have a reasonable assurance of resuming their employment after the break. Specifically, subdivision 7 of the benefits section states:

> (a) Wage credits from employment with an educational institution or institutions may not 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 an educational institution or institutions in the prior academic year or term; and
> >
> > (2) there is a reasonable assurance that the applicant will have employment for an educational institution or institutions in the following academic year or term.
> >
> > . . . .

> This paragraph does not apply if the subsequent employment is substantially less favorable than the employment of the prior academic year or term, or the employment prior to the vacation period or holiday recess.

Minn. Stat. § 268.085, subd. 7(a).

We have previously held the education portion of the benefits-eligibility statute is "unambiguous and requires no judicial construction of its terms." *Swanson v. Indep. Sch. Dist. No. 625*, 484 N.W.2d 432, 434 (Minn. App. 1992), *rev. denied* (Minn. June 30, 1992). Specifically, we stated that the statute "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.* (emphasis added).

Here, the facts are undisputed. Husein was employed by an "educational institution," her only job in the 2020-21 academic term was as a community advisor, and she was offered the same position for the 2021-22 academic year. Because Husein applied for benefits for weeks that occurred *between* the 2020-21 and 2021-22 academic years, the statute plainly considers only the employment in those successive academic years or terms. This means that the ULJ was not to consider Husein's tech-support job from the earlier academic year—and the ULJ did not. Because the statute plainly instructs to only look at the positions held in those two successive terms and the ULJ did so, the ULJ did not err in its interpretation and application of the benefits-eligibility statute.

Considering the pertinent academic terms, the ULJ correctly determined that wage credits from Husein's employment as a community advisor during the 2020-21 academic

year could not be used for unemployment-benefit purposes for any week between the 2020-21 and 2021-22 academic years. All of Husein's wage credits—including those earned as in the tech-support position—were earned working for the university, an "educational institution" under subdivision 7(a) of the benefits-eligibility statute. This meant that, for the weeks between academic terms, Husein had no wage credits by which she could be eligible for unemployment benefits.[3] And, because Husein did not work the tech-support position during the 2020-21 academic year, the ULJ properly considered just the reduction in hazard pay for the community advisor position to determine whether to apply the exception in subdivision 7(a) for circumstances in which employment in the subsequent academic year is "substantially less favorable."

To convince us otherwise, Husein argues that the ULJ ignored the language of Emergency Executive Order No. 20-05, *Providing Immediate Relief to Employers & Unemployed Workers During the COVID-19 Peacetime Emergency* (Mar. 16, 2020) (EO 20-05) which was interpreted in *In re Murack*, 957 N.W.2d 124, 126 (Minn. App. 2021). Husein argues that the suspension of "strict compliance" of Chapter 268 (which is Minnesota's unemployment law) under EO 20-05 and *Murack*

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[3] Contrary to Husein's assertion, the ULJ did not determine that she was no longer "unemployed" during the weeks between academic terms. Eligibility for unemployment benefits turns not just on being unemployed, but on having earned sufficient wages in covered employment during a base period preceding a benefit year. *See* Minn. Stat. § 268.07, subd. 2 (2020) (requiring applicant to have sufficient wage credits to establish a benefit account). The effect of subdivision 7(a) of the benefits-eligibility statute is to preclude an applicant from being eligible for unemployment benefits between academic years or terms based on wage credits earned through employment with an educational institution.

require us to expand unemployment-related definitions. This expansion, Husein contends, should lead us to effectively negate the "two successive academic years or terms" language to include employment from any previous academic terms. But such an expansive reading finds little support in *Murack*. There we interpreted the language of EO 20-05 to mean that a *deadline* under Chapter 268 need not be strictly complied with. 957 N.W.2d at 128-29.[4] Wholly abrogating the substantive requirements of a statute, via the executive order, goes beyond the language of paragraph 1 of EO 20-05 as interpreted by *Murack*.

In sum, the ULJ did not err in its interpretation of the benefits-eligibility statute when it affirmed DEED's determination of ineligibility.

II. The ULJ properly exercised its discretion when it did not hold an additional evidentiary hearing.

Next, Husein argues that the ULJ erred in not holding an additional evidentiary hearing in light of new evidence raised in her request for reconsideration.

This court defers to a ULJ's decision whether to grant an additional evidentiary hearing and will reverse that decision only if the ULJ abused its discretion. *Vasseei v. Schmitty & Sons Sch. Buses Inc.*, 793 N.W.2d 747, 750 (Minn. App. 2010). But the ULJ's discretion is not absolute and "must be exercised within the statutory requirements." *Id.* The relevant statute provides that the ULJ must order an additional evidentiary hearing if a party shows that evidence which was not submitted at the

[4] Additionally, this argument or assertion was not made before the ULJ or in the request for reconsideration and is forfeited. *Ward v. Delta Airlines*, 973 N.W.2d 649, 653 (Minn. Ct. App. 2022), *rev. denied* (June 21, 2022) (applying *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) in context of ULJ proceeding).

evidentiary hearing: (1) would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence or (2) would show that the evidence that was submitted at the evidentiary hearing was likely false and that the likely false evidence had an effect on the outcome of the decision. Minn. Stat. § 268.105, subd. 2(c)(1)-(2) (2020).

Here, Husein argues that the ULJ erred by not considering the impact of EO 20-05 and *Murack* and should have held an evidentiary hearing to do so. But even if *Murack* and EO 20-05 qualified as evidence, these were available at the time of the hearing and request for reconsideration and were not raised until briefing before us. This argument is forfeited. *Ward*, 973 N.W.2d at 653. And, as explained above, *Murack* does not apply as broadly as Husein asserts.[5]

In sum, the ULJ did not abuse its discretion in not holding an additional evidentiary hearing.

Affirmed.

[5] Husein also argues that the ULJ should have asked about the tech-support position during the hearing. But because the plain language of the benefits-eligibility statute does not require the ULJ to consider positions held by the benefits seeker outside of the two successive academic terms, the ULJ need neither consider nor ask about the tech-support position, which occurred outside of those successive terms.