STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1907
A12-1908

Teresa Ann Gregory,
Relator,

vs.

Ind. School District #192,
Respondent,

Department of Employment and Economic Development,
Respondent.

Paula Elizabeth Higgins,
Relator,

vs.

Ind. School District #192,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed April 29, 2013
Affirmed
Stoneburner, Judge

Department of Employment and Economic Development
File Nos. 29977460-3, 29948653-3

Teresa A. Gregory, Farmington, Minnesota (pro se relator)

Paula Elizabeth Higgins, Farmington, Minnesota (pro se relator)

Ind. School District #192, Farmington, Minnesota (respondent)
Lee B. Nelson, Amy R. Lawler, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent Department of Employment and Economic Development)

Considered and decided by Kirk, Presiding Judge; Stoneburner, Judge; and Hudson, Judge.

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

STONEBURNER, Judge

In these consolidated certiorari appeals, relators, who are employees of respondent school district, challenge the determination of an unemployment-law judge (ULJ) that, pursuant to Minn. Stat. § 268.085, subd. 7(a) (2012), they are not entitled to benefits for days not worked from July 1, 2012, through August 2, 2012. Because the ULJ did not err in concluding that the statute applies to relators, we affirm.

FACTS

Relators Paula Higgins and Teresa Gregory have, for many years, been full-time secretarial employees of respondent Independent School District #192 (the school district). Until the 2012-2013 academic year, each had always worked 40-hour weeks during the ten months when school was in session and 35-hour weeks during the two summer months when school was not in session.

In April 2012, the school district informed relators that, due to budget cuts, 160 hours of their employment would be cut in the upcoming academic year. Relators agreed to implement the cuts by not working from July 1 through August 2, 2012. Each sought unemployment benefits for that period of unemployment.

The Minnesota Department of Employment and Economic Development (DEED) denied benefits, and relators initiated separate appeals. Each had a hearing before a ULJ, and the ULJ in each case upheld the denial of benefits based on Minn. Stat. § 268.085, subd. 7(a), which precludes the use of wage credits from educational employment for benefit purposes during the period between terms, if the applicant had educational employment in the prior academic period and has a reasonable assurance of similar employment in the following academic period. The ULJs also determined that, under existing case law, the 7.8% reduction in wages that resulted from the 160-hour cut is not substantial in the context of unemployment benefits such that relators' employment in the following academic year was not substantially less favorable than their prior employment. Each relator requested reconsideration and each ULJ affirmed the denial on reconsideration. Relators appealed separately but filed identical briefs on appeal and DEED filed identical responsive briefs. The cases were consolidated for appeal.

D E C I S I O N

When reviewing the decision of a ULJ, this court may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relators 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) (2012). Interpretation of a statute presents a question of law, which this court reviews de novo. *Swenson v. Nickaboine*, 793 N.W.2d 738, 741 (Minn. 2011).

Relators were denied benefits under Minn. Stat. § 268.085, subd 7(a), which provides:

> (a) No wage credits in any amount from any employment with any educational institution or institutions 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 or institutions in the prior academic year or term; and
>
> (2) there is a reasonable assurance that the applicant will have employment for any educational institution or institutions 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.

Relators do not dispute that (1) they were employed by an educational institution during the 2011-2012 academic year; (2) had reasonable assurance of similar employment in the following academic year; and (3) that they seek to use wage credits for benefits during the period between the two academic terms.

The only argument actually advanced by relators on appeal is that denial of benefits to them is "not acceptable" because a different ULJ found that a similarly situated colleague is entitled to unemployment benefits.[1]

[1] Relators assert that the colleague found eligible for benefits was classified as an administrative assistant and that relators were told that benefits were denied to them because they are classified as "paraprofessionals." But the record does not support the inference that job classification had anything do to with denial of benefits to relators.

Although not specifically raised by relators, DEED construed the appeals to assert that the employment in the upcoming school year is substantially less favorable, such that the statute does not apply to them. DEED argues that because the statute directs consideration of employment only in successive academic years, and because relators' hours for the prior and following academic years are unchanged, relators cannot argue that the assurance was for substantially less favorable employment in the following academic year.

The ULJs based their findings that the employment was not substantially less favorable on caselaw. *See Mastley v. Comm'r of Econ. Sec.*, 347 N.W.2d 515, 518 (Minn. 1984) (concluding that work offered at 15% less than applicant last received was not substantially less favorable so as to prevent disqualification from unemployment benefits for failure to seek suitable employment). Because relators have not advanced any argument or provided any authority to support an argument that their anticipated employment for the 2012-2013 academic year would be substantially less favorable than for the 2011-2012 academic year, the argument is waived. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982). But even if we were to consider this issue, nothing in the

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The ULJ in Gregory's case specifically noted that "[t]he statute does not distinguish between employment by secretaries, teachers, or maintenance workers." The school district did not appeal the ULJ's decision in the collegue's case, but that does not make the decision, which appears to be erroneous, applicable to this case. Minn. Stat. § 268.105, subd. 5a (2012) (providing that no findings of fact or decision or order issued by a ULJ may be held conclusive or binding or used as evidence in any separate or subsequent action in any other forum, regardless of whether the action involves the same or related parties or involves the same facts); *Lewis v. W. Side Cmty. Health Servs., Inc.*, 802 N.W.2d 853, 859-60 (Minn. App. 2011) (noting that the legislature has determined that "[t]here is no equitable or common law . . . allowance of unemployment benefits," and a ULJ decision is not binding on another ULJ).

record supports a conclusion that the ULJs clearly erred by finding that the employment offered for the 2012-2013 academic year was not substantially less favorable than for the previous academic year.

Relators each attached to her brief on appeal a copy of a portion of Minn. Stat. § 268.085, with subdivision 7(b) circled. Subdivision 7(b) provides:

> Paragraph (a) does not apply to an applicant who, at the end of the prior academic year or term, had an agreement for a definite period of employment between academic years or terms in other than an instructional, research, or principal administrative capacity and the educational institution or institutions failed to provide that employment.

To the extent that relators intended the attachment to be an argument that this subdivision prevents the application of subdivision 7(a) to them, the record does not demonstrate that the relators had agreements with the district as described in subdivision 7(b) or that the district failed to provide employment. We find no merit in any implied argument under Minn. Stat. § 268.085, subd. 7(b).

Affirmed.