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Minn. Stat. § 480A.08, subd. 3 (2010).

STATE OF MINNESOTA
IN COURT OF APPEALS
A10-880

Cynthia Sigsworth,
Relator,

vs.

WITC,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed February 22, 2011
Affirmed
Johnson, Chief Judge

Department of Employment and Economic Development
File No. 24084365-3

Cynthia Sigsworth, Balsam Lake, Wisconsin (pro se relator)

WITC (Wisconsin Indianhead Technical College), Shell Lake, Wisconsin (respondent)

Lee B. Nelson, Department of Employment and Economic Development, St. Paul, Minnesota (for respondent Department)

Considered and decided by Johnson, Chief Judge; Shumaker, Judge; and Harten, Judge.*

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

JOHNSON, Chief Judge

Cynthia Sigsworth was a part-time teacher at a technical college when she lost her full-time job. An unemployment law judge determined that her unemployment benefits should be reduced during a break between academic terms to the extent that those benefits were based on wage credits earned at the technical college. We conclude that the unemployment law judge did not err by finding that Sigsworth had a reasonable assurance that she would be employed by the technical college in the academic term following the break. Therefore, we affirm.

FACTS

Sigsworth was employed on a full-time basis at Aerotech Scientific from February 2007 through December 5, 2008. She also has been employed since 2005 as a part-time adjunct instructor at Wisconsin Indianhead Technical College (WITC). Each fall, she taught classes two nights per week; each spring, she taught classes one night per week. WITC's policy provides that a class will be cancelled if fewer than ten students enroll, although exceptions may be made. At the time of the hearing on Sigsworth's administrative appeal, none of her classes had been cancelled for lack of enrollment.

After Sigsworth lost her job with Aerotech, she applied for unemployment benefits. In December 2009, the Minnesota Department of Employment and Economic Development (DEED) determined that, until December 19, 2009, Sigsworth was eligible for a weekly benefit amount of $377 based on her wage credits from her full-time job with Aerotech and her part-time position with WITC. DEED also determined that, for

the period of December 20, 2009, to January 16, 2010, Sigsworth would be eligible for a weekly benefit amount of only $210. DEED calculated Sigsworth's weekly benefit amount to be lower during the break between academic terms because she could not rely during that period on the wage credits she had earned at WITC. After Sigsworth brought an administrative appeal of the determination, an unemployment law judge (ULJ) upheld the initial determination. After Sigsworth requested reconsideration, the ULJ affirmed. Sigsworth appeals by way of a writ of certiorari.

D E C I S I O N

Sigsworth argues that the ULJ erred by determining that her unemployment benefits should be reduced between academic terms. This court reviews a ULJ's decision denying benefits to determine whether a petitioner's substantial rights may have been prejudiced because the findings, inferences, conclusion, or decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record. *See* Minn. Stat. § 268.105, subd. 7(d) (2008). To the extent a ULJ's decision depends on an interpretation of the unemployment benefit statutes, we apply a *de novo* standard of review. *Halvorson v. County of Anoka*, 780 N.W.2d 385, 388-89 (Minn. App. 2010). We review a ULJ's findings of fact in the light most favorable to the decision, and we "will not disturb them as long as there is evidence that reasonably tends to sustain those findings." *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

After DEED receives an application for unemployment benefits, it issues a determination of benefit account, which includes the applicant's weekly unemployment benefit amount. Minn. Stat. § 268.07, subd. 1(a), (b) (Supp. 2009). The weekly

unemployment benefit amount is calculated according to a statutory formula, which uses the applicant's wage credits from the applicant's benefit year. *Id.*, subd. 2(b) (Supp. 2009); *see also* Minn. Stat. § 268.035, subd. 27 (2008). But the legislature has determined that teachers should not receive unemployment benefits during breaks in the academic calendar to the extent that benefits are based on wage credits earned as a teacher: "No wage credits in any amount from any employment with any educational institution . . . may be used for unemployment benefit purposes for any week during the period between two successive academic years or terms if," among other things, "there is a reasonable assurance that the applicant will have employment for any educational institution . . . in the following academic year or term." Minn. Stat. § 268.085, subd. 7(a)(2) (2008). This provision "applies to any vacation period or holiday recess." *Id.*, subd. 7(e) (2008). The term "reasonable assurance" is defined to mean "written, oral, implied, or established by custom or practice." *Id.*, subd. 7(k) (2008). These statutory provisions recognize that a break between academic terms "is not a severance of the employment relationship warranting" unemployment benefits. *Sparrow v. Independent Sch. Dist. 272*, 534 N.W.2d 551, 553 (Minn. App. 1995).

The central issue for the ULJ was whether Sigsworth had a "reasonable assurance" of "employment . . . in the following academic . . . term," in January 2010. Minn. Stat. § 268.085, subd. 7(a)(2). When Sigsworth first appealed, the ULJ found that there was a reasonable assurance by custom and practice that she would have the same employment available in the next academic term because she had taught at least one class each semester since the fall of 2005. In ruling on Sigsworth's request for reconsideration, the

ULJ emphasized that Sigsworth "had at least one class in each semester for four consecutive years" preceding December 2009. The ULJ also stated that Sigsworth never was not offered employment in a subsequent academic term. The ULJ reasoned that this pattern of consistent employment, without any cancellations of her courses, provided her with a reasonable assurance of employment in the academic term beginning in January 2010.

Sigsworth does not dispute the underlying facts. She contends simply that she did not have a reasonable assurance of employment in January 2010 because there was uncertainty as to whether the minimum number of students would enroll. But some degree of uncertainty of re-employment is not inconsistent with a reasonable assurance of re-employment. A reasonable assurance may be established "by custom or practice." Minn. Stat. § 268.085, subd. 7(k). In light of the evidentiary record, which reflected consistent part-time employment at WITC, semester after semester, the ULJ did not err by concluding that Sigsworth had a reasonable assurance of part-time employment in the academic term beginning in January 2010.

Affirmed.