

No. A10-2014

State of Minnesota
In Court of Appeals

AMY LEWIS,

Relator,

vs.

WEST SIDE COMMUNITY HEALTH SERVICES, INC,

Respondent,

and

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,

Respondent.

RESPONDENT-DEPARTMENT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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Legal Issue

Under the law, an employee who works for an organization that has contracted with a secondary school to provide services that the school could have performed by its employees is not entitled to collect unemployment benefits between academic years, if the employee has a reasonable assurance of employment in the following academic year. Amy Lewis is employed by Westside Community Health Services, Inc., a nonprofit organization that provides comprehensive primary healthcare services and education at several metro locations, including St. Paul public high schools. Lewis provided services to students at the Como High School location. Can Lewis collect unemployment benefits for the time between academic years?

The Unemployment Law Judge Bryan Eng found Lewis ineligible for unemployment benefits for the period between academic terms.

Statement of the Case

The question before this court is whether Amy Lewis is entitled to unemployment benefits. Lewis established a benefit account with the Minnesota Department of Employment and Economic Development (the "Department"). A Department adjudicator determined that Lewis was ineligible for benefits during the summer months because she could not use wages from working at Westside

Community Health Services (WSCHS) for unemployment purposes.¹ Lewis appealed that determination, and Unemployment Law Judge (“ULJ”) Bryan Eng held a de novo hearing. The ULJ determined that Lewis' employment was provided under a contract between WSCHS and St. Paul Public Schools (SPPS) and therefore her wages from WSCHS could not be used for unemployment purposes.² Because Lewis had no wage credits from other employment, she was ineligible for unemployment benefits during the summer months. Lewis filed a request for reconsideration with the ULJ, who affirmed.³

This matter comes before the Minnesota Court of Appeals on a writ of certiorari obtained by Lewis under Minn. Stat. § 268.105, subd. 7(a) (2010) and Minn. R. Civ. App. P. 115. The Department is charged with the responsibility of administering and supervising the unemployment insurance program, and is the primary responding party in this case.⁴ The Department does not represent the co-respondent in this proceeding and this brief should not be considered advocacy for Westside Community Health Services, Inc.

Statement of Facts

Amy Lewis is employed by WSCHS, a nonprofit organization that provides comprehensive primary healthcare services and education to low-income

¹ E-1(1). Transcript references will be indicated “T”. Exhibits in the record will be “E” with the number following.

² Appendix to Department’s Brief, A6-A10.

³ Appendix, A1-A5.

communities. WSCHS operates clinics at multiple locations and has had a continuing agreement with St. Paul Public Schools (SPPS) for several years regarding the operation of school-based health clinics. Lewis has provided healthcare services and education to students at Como High School's clinic location since August 2002.⁵ She performs duties as a licensed social worker, working approximately 24 hours per week.⁶ The clinic is closed during the summer months between academic terms, and Lewis does not work elsewhere. Lewis returned to work during the 2009-2010 school year and, at the time of the hearing, expected to return for the 2010-2011 school year.⁷

Standard of Review

When reviewing an unemployment-benefits decision, the Court of Appeals may affirm the decision, remand for further proceeding, reverse, or modify the decision if Lewis' substantial rights were prejudiced because the decision of the ULJ violated the constitution, was based on an unlawful procedure, was affected by error of law, was unsupported by substantial evidence, or was arbitrary or capricious.⁸

⁴ Minn. Stat. § 116J.401, subd. 2(18) (2010); Minn. Stat. § 268.105, subd. 7 (2010).

⁵ T. 15-16.

⁶ *Id.*

⁷ T. 33-34.

⁸ Minn. Stat. §268.105, subd. 7(d)(3)-(6) (2008).

The Court of Appeals held in *Skarhus v. Davannis* that it will not disturb the ULJ's factual findings when the evidence substantially sustains them.⁹ It views the ULJ's factual findings "in the light most favorable to the decision,"¹⁰ and gives deference to the ULJ's credibility determinations.¹¹ The Court of Appeals also held in *Swanson v. Independent School Dist. No. 625* that the interpretation of Minn. Stat. § 268.08, subd. 6(a) and (b), the precursor to Minn. Stat. § 268.085, subd. 7, is a matter of law.¹²

Argument for Ineligibility

Individuals who have employment with educational institutions and do not work during the time between academic years or terms are not entitled to count the wage credits earned from their employment for purposes of unemployment. Thus, most of those applicants are typically unable to collect unemployment benefits during summer breaks because they usually do not have wage credits from other employment. That is precisely the position Lewis encounters here, as WSCHS is her sole employer and is considered an "educational institution" under the law. Minn. Stat. § 268.085, subd. 7 provides:

(a) No wage credits in any amount from any employment with any educational institution or institutions earned in any capacity may be

⁹ 721 N.W.2d 340, 344 (Minn. App. 2006) (citing Minn. Stat. §268.105, subd. 7(d)).

¹⁰ 721 N.W.2d 340, 344 (Minn. App. 2006) (citing *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 377 (Minn. 1996)).

¹¹ *Id.* (citing *Jenson v. Dep't of Econ. Sec.*, 617 N.W.2d 627, 631(Minn. App. 2000), review denied (Minn. Dec. 20, 2000)).

¹² 484 N.W.2d 432, 434 (Minn. App. 1992).

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.

* * *

(f) This subdivision applies to employment with an educational service agency if the applicant performed the services at an educational institution or institutions. "Educational service agency" means a governmental agency or entity established and operated exclusively for the purpose of providing services to one or more educational institutions. *This subdivision also applies to employment with Minnesota or a political subdivision, or a nonprofit organization, if the services are provided to or on behalf of an educational institution or institutions.*¹³

In *Vargas v. Northwest Area Foundation*, the Court of Appeals, citing a number of statutory provisions, held that an individual's eligibility for unemployment benefits is determined based upon the available evidence without regard to any burden of proof.¹⁴

1. Lewis cannot collect unemployment benefits for any week during the period between academic terms.

a. Lewis is employed with an "educational institution" as defined by the statute.

While the ULJ examined Lewis' eligibility under subdivision 8 of the statute, which involves services for school contractors, the Court may affirm the

¹³ Minn. Stat. § 268.085, subd. 7(a) and (f) (2010) (emphasis added).

¹⁴ 673 N.W. 2d 200 (Minn. App. 2004).

ULJ's decision based on subdivision 7 alone. Minn. Stat. 268.085, subd. 7(a) limits the ability of employees to use wage credits earned "from any employment with any educational institution or institutions." Under the statute, an "educational institution" includes an educational organization described in United States Code, title 26, section 501(c)(3) of the federal Internal Revenue Code, and exempt from income tax under section 501(a).¹⁵ WSCHS is a nonprofit organization whose primary purpose is to provide health care services and education to immigrant and low-income communities.¹⁶ It is exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code.¹⁷ Because WSCHS qualifies as an "educational institution" under the statute, Lewis' wage credits from her employment cannot be used for unemployment benefit purposes for the period between academic terms, and the ULJ's decision should be affirmed.

b. Lewis is employed with a nonprofit organization and her services are provided to an educational institution.

Even if WSCHS is not considered an educational institution in and of itself, another paragraph of the statute applies the between terms denial provision to employment with "a nonprofit organization, if the services are provided to or on behalf of an educational institution."¹⁸ In her brief, Lewis asserts that this

¹⁵ Minn. Stat. 268.085, subd. 7(1).

¹⁶ T. 67. *See also* <http://www.westsidetchs.org>, the organization's website, for a more comprehensive view of services provided.

¹⁷ T. 70.

¹⁸ Minn. Stat. § 268.085, subd. 7(f).

subdivision does not pertain in her case because WSCHS does not provide services to or on behalf of St. Paul public schools.¹⁹ Her argument, however, is without merit.

Although WSCHS caters to a wide community of people at various sites around the metro area, WSCHS is present in Como High School to provide services exclusively to the students there as part of the district's school-based health clinics program. This is not a clinic where the community at large can receive services; recipients must be a student at the school. Lewis' assertion that the schools could function just fine without the program is irrelevant. There is nothing in the statute requiring that the services furnished by the nonprofit organization must be integral to the success of the educational institution to which they're provided. Here, SPPS has obviously perceived the value in providing its secondary students access to healthcare and health education on school premises. According to the parties' agreement, "SPPS is the host and collaborating agency" of school-based clinics and WSCHS is responsible for their operation.²⁰ Because WSCHS is a nonprofit organization providing services to Como High School, paragraph (f) of subdivision 7 clearly applies, and Lewis' wages cannot be used for purposes of unemployment benefits between terms.

¹⁹ Relator's brief, p. 2.

²⁰ E-7(3).

c. Lewis' employment was provided under a contract between WSCHS and St. Paul Public Schools.

In addition to the aforementioned subdivision, Lewis' wages are subject to the between terms denial provision if:

- (1) the employment was provided under a contract between the employer and an elementary or secondary school; and
- (2) the contract was for services that the elementary or secondary school could have had performed by its employees.²¹

Lewis argues that a contract didn't exist between the parties during the time in question because there was no signed written agreement in place.²² However, it is not essential that a contract be in writing; it may be oral. As the Minnesota Supreme Court noted in *Webb Bus. Promotions, Inc. v. Am. Elecs. & Entm't Corp.*, "[t]he agreement necessary to form a contract need not be express, but may be implied from circumstances that clearly and unequivocally indicate the intention of the parties to enter into a contract."²³ Whether a contract exists requires a threshold determination that the parties agreed to be bound by specific contract terms, which presents a question of fact.²⁴ Here, substantial evidence in the record supports the ULJ's factual determination that a contract existed between WSCHS

²¹ Minn. Stat. § 268.085, subd. 8(a).

²² Relator's brief, p. 3.

²³ 617 N.W.2d 67, 75 (Minn.2000); *see also Stubbs v. N. Memorial Med. Ctr.*, 448 N.W.2d 78, 82 (Minn.App.1989) (stating that "courts have held that a contract implied in fact is in all respects a true contract"), *review denied* (Minn. Jan. 12, 1990).

²⁴ *See W. Insulation Servs., Inc. v. Cent. Nat'l Ins. Co. of Omaha*, 460 N.W.2d 355, 358 (Minn. App. 1990) (noting that contractual intent is question of fact).

and SPPS, and therefore the finding must be affirmed.

WSCHS has operated school-based clinics within St. Paul public schools since 2004.²⁵ Although the first written agreement between the parties' was set to expire on June 30, 2006, the parties continued their relationship under the same conditions without any break in services. Thus, it is clear that the parties to the agreement had a meeting of the minds despite the absence of a written document. This is further evidenced by the fact that an updated written agreement was eventually drafted with essentially no changes to the terms. By dating the document retroactively to July 1, 2009, the parties plainly demonstrated their intent to be bound by the agreement during that time period. Hence, Lewis' employment was plainly provided under a contract between WSCHS and SPPS.

Lewis also contends that the statute is inapplicable because, if a contract existed between the parties, it was for services that the school could not have had its own employees perform.²⁶ Lewis, however, merely makes an oversimplified comparison between the roles school social workers and healthcare personnel currently play and the unique services provided to the school by WSCHS. Just because SPPS presently *chooses* to limit the roles of its own social workers and healthcare personnel does not mean that the school district could not alternatively elect to expand their employees' function and thereby provide additional services. While the idea of funding a comprehensive clinic within the school would

²⁵ T. 32; E-5.

²⁶ Relator's brief, p. 3.

undoubtedly be unpopular with many taxpayers, the district could certainly employ personnel capable of providing these added services.²⁷

2. The fact that Lewis and other WSCHS employees were previously paid unemployment benefits by the Department between academic terms is not binding.

Lewis points out that she has received unemployment benefits the past three summers but acknowledges that Department ULJs have treated the issue differently for some of her coworkers.²⁸ Upon further review of her claim, it appears that applicants who were initially denied benefits based on the between terms denial provision tended to appeal their denials, whereas WSCHS did not appeal cases where the applicant was initially granted benefits the past few years. Moreover, WSCHS did not participate in evidentiary hearings or submit evidence in cases that were appealed by applicants, for whatever reason. Because the ULJs were confronted with such disparate evidence, their decisions understandably varied. A more uniform result may occur henceforth, however, since WSCHS has recently begun taking an active role in providing documentary and testimonial evidence at appeal hearings. Nonetheless, prior ULJ decisions are not binding in a separate or subsequent action²⁹ and the fact that Lewis received benefits in the past

²⁷ While Lewis includes statements in her brief allegedly made by Ann Hoxie, the director of school nursing, and Dan Mesick, Como High School principal, those individuals never testified at the appeal hearing and their supposed statements were never mentioned or introduced as evidence. Thus, they are not part of the record on appeal and cannot be considered.

²⁸ Relator's brief, p. 5.

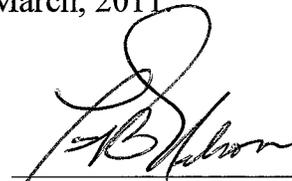
²⁹ See Minn. Stat. § 268.105, subd. 5a (2010).

has no bearing on the decision before the Court today. If the circumstances surrounding Lewis' employment have truly remained unchanged, then it's probable that she collected unemployment benefits in the past that she should not have been eligible to receive. Perpetuation of an error for sake of consistency is not a legal principle.

Conclusion

Unemployment Law Judge Bryan Eng correctly concluded that Amy Lewis could not use the wage credits earned from her employment with WSCHS for purposes of unemployment benefits between academic terms. The Department requests that the Court affirm the decision of the Unemployment Law Judge.

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