

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1569**

Hossain Khorroosi,
Relator,

vs.

University of Wisconsin,
Respondent,

University of Minnesota,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 21, 2012
Affirmed
Bjorkman, Judge**

Department of Employment and Economic Development
File No. 26297086-4

Hossain Khorroosi, Superior, Wisconsin (pro se relator)

University of Wisconsin, c/o WI Emp Security Division, Madison, Wisconsin
(respondent)

University of Minnesota, Minneapolis, 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 Halbrooks, Presiding Judge; Worke, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Relator challenges the unemployment-law judge's (ULJ) determination that he was ineligible for unemployment benefits during his time off between academic terms because he was reasonably assured of employment in the following term. Relator argues that the ULJ erred by finding that the terms of his expected employment were not substantially less favorable than the preceding academic term and that his status as a temporary instructor precludes such a finding. We affirm.

FACTS

Relator Hossain Khorroosi worked as a math instructor for the University of Wisconsin-Superior during the 2009-10 and 2010-11 academic years, teaching multiple classes in both the fall and spring semesters. Khorroosi did not teach during summer 2011 and applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) determined that Khorroosi was not eligible because he was reasonably assured of employment at the university the following academic year. Khorroosi appealed, and a ULJ determined that Khorroosi was ineligible for unemployment benefits because, as of the June 28 hearing, he expected to return to the university for the 2011-12 academic year under terms that were not substantially less favorable than the previous academic year. Khorroosi sought reconsideration, and the ULJ affirmed. This certiorari appeal follows.

DECISION

On appeal, we may reverse or modify a ULJ's decision if the petitioner's substantial rights have been prejudiced because the decision is not supported by substantial evidence, is arbitrary or capricious, or is affected by error of law. Minn. Stat. § 268.105, subd. 7(d) (2010). We review the ULJ's factual findings in the light most favorable to the decision and will not disturb findings that are supported by substantial evidence. *See Stagg v. Vintage Place, Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). We review the ULJ's legal determinations de novo. *See id.*

For employees of educational institutions, time off between successive academic years generally is not considered a "severance of the employment relationship." *Halvorson v. Cnty. of Anoka*, 780 N.W.2d 385, 388 (Minn. App. 2010) (quotation omitted). Accordingly, Minnesota law limits unemployment benefits payable to educational employees:

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.

Minn. Stat. § 268.085, subd. 7(a) (2010). "A 'reasonable assurance' may be written, oral, implied, or established by custom or practice." *Id.*, subd. 7(k) (2010).

I. Substantial evidence supports the ULJ's finding that Khoroosi is reasonably assured of employment that is not substantially less favorable than the prior year.

Khoroosi does not directly dispute that he was reasonably assured of employment at the university in the 2011-12 academic year but argues that the ULJ erred by finding that the employment was not substantially less favorable than the prior academic year. We disagree.

Khoroosi had not received a formal contract from the university at the time of the June 28 hearing but expected to receive one by the end of August, as he had in previous years. Accordingly, the ULJ looked to other information available to Khoroosi and past years' practice. Khoroosi testified that the university's "tentative" fall schedule had him teaching two classes and the spring semester had not yet been established. The ULJ found it "likely" that Khoroosi would nonetheless be assigned "a number of classes in the spring." The record supports that finding. Khoroosi taught multiple classes each semester in previous academic years, ultimately earning approximately the same amount each year. The university had not told Khoroosi that the 2011-12 academic year would be any different. Khoroosi's schedule was based on the university's needs, which were unknown in June 2011, just as in the prior two years. And Khoroosi acknowledged that the university added classes to his spring 2011 schedule as late as December 29, 2010.

Khoroosi argues that the ULJ erred in relying on the number of classes he taught in spring 2011 because he took the place of an injured professor, a circumstance unlikely

to be repeated in the 2011-12 term.¹ We disagree. The ULJ's finding that Khorooosi would likely teach in the spring 2012 was based on several facts, only one of which was the addition of spring 2011 classes in December 2010. Khorooosi's course loads were comparable in spring 2010 and 2011. There was no evidence that student enrollment was down or that there was any other reason to think that Khorooosi's spring 2012 schedule would be substantially less favorable than in prior years.

Overall, the record contains substantial evidence that Khorooosi was likely to be assigned multiple classes for both fall and spring semesters of the 2011-12 academic year, which is not a substantially less favorable schedule than the preceding academic year.

II. Khorooosi's status as a temporary professor does not preclude a finding that he is reasonably assured of employment that is not substantially less favorable.

Khorooosi also argues that he cannot be reasonably assured of employment that is not substantially less favorable because he is a "temporary," rather than a tenured or tenure-tracked, instructor. We are not persuaded. An educational employee's eligibility for unemployment benefits depends on the nature of the educational institution, the representations the institution has made to the employee regarding future employment, and the history of the employment relationship. *See* Minn. Stat. § 268.085, subd. 7(i)

¹ Khorooosi refers to documents he submitted along with his request for reconsideration: a January 27, 2011 contract letter increasing his spring 2011 schedule again, and two schedule print-outs with hand-drawn arrows indicating the additions to Khorooosi's schedule from the other professor's injury. Because Khorooosi did not explain why he failed to provide this information for the initial hearing, this evidence was not properly before the ULJ. *See* Minn. Stat. § 268.105, subd. 2(c) (2010).

(stating that “on-call” educational employees do not have substantially less favorable employment so long as there is “a reasonable assurance of any on-call employment with any educational institution or institutions for the following academic year or term”); 7(k) (providing that “[a] ‘reasonable assurance’ may be written, oral, implied, or established by custom or practice”) (2010); *Halvorson*, 780 N.W.2d at 390-91 (discussing nature of educational institution and pattern of academic year).

While a tenure contract would amply establish a reasonable expectation of employment in an upcoming term that is not substantially less favorable than the previous term, other evidence may just as clearly establish that same fact. As noted above, the record contains substantial evidence that Khorroosi was reasonably assured of employment in 2011-12 on terms similar to those in the prior academic year. On this record, the ULJ did not err by concluding that Khorroosi was ineligible for unemployment benefits for summer 2011.

Affirmed.