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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-136**

Cathleen Brannen,
Respondent,

vs.

Metropolitan State University,
Relator,

Department of Employment and Economic Development,
Respondent.

**Filed October 26, 2010
Reversed
Johnson, Judge**

Department of Employment and Economic Development
File No. 22608522-2

Cathleen Brannen, St. Paul, Minnesota (pro se respondent)

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Considered and decided by Minge, Presiding Judge; Johnson, Judge; and Collins,
Judge.*

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

UNPUBLISHED OPINION

JOHNSON, Judge

Cathleen Brannen was vice president for administration and finance at Metropolitan State University. After leaving that position, she sought unemployment benefits and was deemed eligible by an unemployment law judge. The university appeals, arguing that Brannen is ineligible for unemployment benefits because her high-level position at the university is excluded from the unemployment compensation scheme. We agree with the university that Brannen was employed by the university in a “noncovered” position and, therefore, reverse.

FACTS

Metropolitan State University (Metro State) is part of the Minnesota State Colleges and Universities (MnSCU) system. Metro State employed Brannen as its vice president for administration and finance from August 1999 to March 2009. In that position, Brannen served as the chief fiscal officer for Metro State and reported directly to Metro State’s president. The job description for her former position states, among other things, that she was “responsible to the president for financial management, the development of budget plans and policies and the direction of the university’s physical plant, human resources, information technology, financial aid and administrative service functions.” Her annual salary was approximately \$146,000.

In 2009, Metro State hired a new president. In March 2009, the incoming president informed Brannen that she was being terminated because the new president wished to select a different person for the position. The incoming president did not

terminate Brannen because of her past performance but simply because the incoming president wished to exercise the prerogative to fill that position with a person of her choice.

After her termination, Brannen applied for unemployment benefits. In late March 2009, the Minnesota Department of Employment and Economic Development (DEED) made an initial determination that Brannen is eligible for benefits. In April 2009, Metro State filed an administrative appeal, and a telephonic hearing was held before an unemployment law judge (ULJ) in April 2009. At the hearing, Metro State argued that Brannen is ineligible for unemployment benefits because her former position at Metro State is excluded from the unemployment compensation system. In mid-May, the ULJ rejected Metro State's argument and determined that Brannen is eligible for unemployment benefits. In June 2009, Metro State requested reconsideration. In December 2009, the ULJ issued an order affirming his May 2009 decision. Metro State appeals by way of a writ of certiorari.

D E C I S I O N

Metro State argues that the ULJ erred by determining that Brannen is eligible to receive unemployment benefits. This court reviews a ULJ's benefits decision to determine whether the findings, inferences, conclusions of law, or decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d) (2008). If the relevant facts are not in dispute, we apply a *de novo* standard of review to the question whether an applicant is eligible to receive unemployment benefits. *Irvine v. St. John's Lutheran Church*, 779 N.W.2d 101, 103

(Minn. App. 2010) (citing *Markel v. City of Circle Pines*, 479 N.W.2d 382, 384 (Minn. 1992)).

To be eligible for unemployment benefits, an applicant must establish an unemployment benefits account, which requires a sufficient amount of wage credits. Minn. Stat. §§ 268.069, subd. 1(1), .07, subd. 2(a) (Supp. 2009). “Wage credits” are defined as “the amount of wages paid within an applicant’s base period for *covered employment*.” Minn. Stat. § 268.035, subd. 27 (2008) (emphasis added). As a general rule, *covered employment* includes all employment performed with the state, “unless it is excluded as *noncovered employment*.” *Samuelson v. Prudential Real Estate*, 696 N.W.2d 830, 832 (Minn. App. 2005) (emphasis added); *see also* Minn. Stat. § 268.035, subd. 15 (2008) (defining “employment”); *id.*, subd. 12 (2008) (defining “covered employment”). An applicant “who works in noncovered employment may not establish an unemployment benefits account.” *Samuelson*, 696 N.W.2d at 832.

The legislature has expressly excluded 34 types of employment from the unemployment compensation scheme by deeming them “noncovered employment.” *See* Minn. Stat. § 268.035, subd. 20 (2008). One type of employment that has been expressly excluded is “employment for [the state of] Minnesota that is a major policy-making or advisory position in the unclassified service, including those positions established under section 43A.08, subdivision 1a.” Minn. Stat. § 268.035, subd. 20(15). The unclassified service of the state government is defined in both subdivision 1 and subdivision 1a of section 43A.08. In subdivision 1, the legislature has specifically identified 20 categories of positions that are unclassified. Minn. Stat. § 43A.08, subd. 1 (2008). In subdivision

1a, the legislature has provided more generally that “[a]ppointing authorities for [certain] agencies may designate additional unclassified positions,” if seven requirements are satisfied. Minn. Stat. § 43A.08, subd. 1a (2008). MnSCU is one of the agencies that is permitted to designate additional unclassified positions. *Id.*

The parties agree that Brannen’s eligibility for unemployment benefits depends on whether her former position is within subdivision 20(15) and, therefore, noncovered. Brannen’s former position is within subdivision 20(15) if, first, it is in the unclassified service of the state and, second, it is “a major policy-making or advisory position.” See Minn. Stat. § 268.035, subd. 20(15).

A. Unclassified Service

Metro State argues that Brannen’s former position is in the unclassified service because it is within one of the 20 categories of positions identified in section 43A.08, subdivision 1. The ULJ did not analyze this issue because he concluded that Metro State had failed to establish that Brannen’s former position is “a major policy-making or advisory position.” *Id.*

The relevant portion of section 43A.08 provides:

Unclassified positions are held by employees who are:

....

presidents, *vice-presidents*, deans, other managers and professionals in academic and academic support programs, administrative or service faculty, teachers, research assistants, and student employees eligible under terms of the federal Economic Opportunity Act work study program in the Perpich Center for Arts Education and the Minnesota State Colleges and Universities, *but not the custodial, clerical, or*

maintenance employees, or any professional or managerial employee performing duties in connection with the business administration of these institutions.

Minn. Stat. § 43A.08, subd. 1(9) (emphasis added). Metro State relies on the first clause of subdivision 1(9), which specifically refers to “vice-presidents.” In response, Brannen argues that the first clause does not apply because she was not a vice president in an “academic” or “academic support” program. She argues further that her former position is described in the last clause of subdivision 1(9), which refers to the business administration of the university.

Each interpretation of subdivision 1(9) has some merit, but Metro State’s interpretation is more faithful to the text of the statute. The prepositional phrase “in academic and academic support programs” does not refer to anything other than the noun clause immediately preceding it, “other managers and professionals.” This is so for two reasons. First, “a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows.” *Barnhart v. Thomas*, 540 U.S. 20, 26, 124 S. Ct. 376, 380 (2003). Second, if the prepositional phrase were intended to also refer to the preceding nouns “presidents, vice-presidents, deans,” it would have been appropriate, as a matter of grammar, to use a serial semi-colon after the word “programs.” See *The Chicago Manual of Style* § 6.60 (15th ed. 2003).

In contrast, Brannen’s interpretation relies on the second clause, which states that the following positions are *not* in the unclassified service: “any professional or managerial employee performing duties in connection with the *business administration* of these institutions.” Brannen contends that this clause applies because she was vice

president for administration and finance. But this part of the second clause must yield to the first clause, which refers specifically to vice-president positions. If both a specific statute and a more general statute may govern a particular situation, the more specific statute must take precedence. See *Custom Ag Serv., Inc. v. Commissioner of Revenue*, 728 N.W.2d 910, 917 (Minn. 2007). In this instance, the phrase “any professional or managerial employee performing duties in connection with the *business administration* of these institutions” must be interpreted to mean any such employee other than a vice president.

We also rely on the canon of statutory interpretation that a statute should be interpreted to effectuate its purpose. *Education Minnesota v. Independent Sch. Dist. No. 695*, 662 N.W.2d 139, 143 (Minn. 2003). It appears that the legislature intended the first clause to identify employees of a university who are engaged in teaching or leadership positions, and intended the second clause to identify employees of a university who are engaged in positions less concerned with the educational mission of the university, such as “custodial, clerical, [or] maintenance employees.” Minn. Stat. § 43A.08, subd. 1(9). Brannen’s role at Metro State plainly had more in common with the positions described in the first clause than the positions described in the second clause.

Thus, Brannen’s former position of vice president for administration and finance at Metro State is within subdivision 1(9) of section 43A.08 and, therefore, in the unclassified service of the state government. In light of this conclusion, we need not consider whether Metro State designated Brannen’s former position as unclassified pursuant to subdivision 1a.

B. Major Policy-Making or Advisory Position

Metro State also argues that Brannen's former position was "a major policy-making or advisory position." Minn. Stat. § 268.035, subd. 20(15). The ULJ determined that this requirement was not satisfied for the following reasons:

Within agencies of the state generally such positions are restricted to the commissioner or deputy commissioner, positions within two levels of the governor. In the case of a vice-president for finance and administration the position is removed by a board of trustees and a chancellor from the level of the governor and is subordinate to the campus president as well as the chancellor and the board.

Before going further, we must determine the appropriate frame of reference for Brannen's former position. The ULJ considered whether Brannen had a policy-making or advisory role *with respect to the entire MnSCU system*. On appeal, Metro State urges us to consider whether Brannen had such a role *with respect to Metro State*. In her responsive brief, Brannen takes the ULJ's approach by discussing her role within MnSCU. But it is necessary to analyze Brannen's role within Metro State. The MnSCU board of trustees is authorized to enter into contracts of employment only with persons at the level of chancellor, vice-chancellor, and president. Minn. Stat. § 136F.40, subd. 2(a) (2008). Brannen served at the pleasure of Metro State's president, not the MnSCU board or chancellor. Metro State is the entity that filed the writ of certiorari that gives rise to this opinion. No party to this case has stated that Brannen was employed by MnSCU. Thus, we must consider whether Brannen had a major policy-making or advisory role within Metro State.

The undisputed evidence in the agency record amply demonstrates, as a matter of law, that Brannen served in “a major policy-making or advisory position” within Metro State. Minn. Stat. § 268.035, subd. 20(15). She reported directly to the president of Metro State. The new president of the university chose to terminate Brannen without cause solely for the purpose of hiring a person with whom the president might enjoy a better working relationship. That fact alone suggests that giving trustworthy advice to the president was a significant part of Brannen’s former position. Furthermore, the job description for Brannen’s former position describes duties that reflect a major policy-making role. Among other things, Brannen was responsible for “development of . . . plans and policies” concerning financial matters, “development . . . of comprehensive campus plans” concerning facilities management issues, and “development . . . of effective internal policies” concerning administrative services. Thus, Brannen’s former position at Metro State is “a major policy-making or advisory position.” *Id.*

In sum, Brannen’s employment at Metro State was noncovered because it was in “a major policy-making or advisory position in the unclassified service.” *Id.* Therefore, the ULJ erred by concluding that Brannen is eligible for unemployment benefits.

Reversed.