STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2314

David R. Savard,
Relator,

vs.

William Mitchell College of Law,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed September 16, 2013
Affirmed
Schellhas, Judge

Department of Employment and Economic Development
File No. 28051995-6

David R. Savard, Apple Valley, Minnesota (pro se relator)

William Mitchell College of Law, St. Paul, Minnesota (respondent)

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

Considered and decided by Stauber, Presiding Judge; Schellhas, Judge; and Hooten, Judge.

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

SCHELLHAS, Judge

Relator appeals from an unemployment-law judge's decision that he was not entitled to wage credits for his part-time, year-round employment with respondent. We affirm.

FACTS

Relator David Savard has two jobs: full-time employment as an auditor with the Minnesota Department of Revenue and part-time, year-round employment as a security officer with respondent William Mitchell College of Law. From July 1–20, 2011, Savard was laid off from his employment with the department of revenue due to the shutdown of the Minnesota government. He applied for unemployment benefits with respondent Minnesota Department of Employment and Economic Development (DEED), and DEED determined that he was not entitled to wage credits for his employment with William Mitchell because "[w]ages the applicant earned with educational institutions cannot be used as the basis for unemployment benefits during the break between school years or terms." Savard appealed the determination, arguing that William Mitchell's academic year ended when its summer session ended on July 19, 2011.

An unemployment-law judge (ULJ) conducted an evidentiary hearing and decided that Savard's wages earned from William Mitchell could not be used for unemployment-benefit purposes for the period between two school terms. Savard requested reconsideration of the ULJ's decision, and a ULJ affirmed the decision. Savard appealed

to this court by writ of certiorari, and this court reversed and remanded in an order opinion because the ULJ failed to address relator's argument that WMCL's summer session is not between two successive academic years or terms. *Savard v. William Mitchell Coll. of Law*, No. A11-2014 (Minn. App. Aug. 15, 2012). This court directed the ULJ to determine on remand whether William Mitchell's summer session is between two successive academic years or terms. *Id.*

On remand, a ULJ conducted an evidentiary hearing and decided that Savard's wages from William Mitchell must be removed from his base-period wages from May 15, 2011, to August 20, 2011, and could not be used to calculate Savard's weekly and maximum benefit amounts. Savard requested reconsideration of the ULJ's decision, and a ULJ affirmed the decision.

Savard appeals the ULJ's decision by writ of certiorari.

D E C I S I O N

This court may reverse or modify a ULJ's decision if the relator's substantial rights were prejudiced by findings, inferences, or a decision "affected by . . . error of law" or "unsupported by substantial evidence in view of the entire record as submitted," among other things. Minn. Stat. § 268.105, subd. 7(d)(4)–(5) (2012).[1] "[W]e will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 882 (Minn. App. 2012) (quotation omitted). Where no

[1] We cite the most recent version of the statutes in this opinion because they have not been amended in relevant part. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, "appellate courts apply the law as it exists at the time they rule on a case").

questions of fact exist, the question of whether a relator is entitled to wage credits for his employment at an educational institution under Minn. Stat. § 268.085, subd. 7(a) (2012), is one of statutory interpretation, which this court reviews de novo. *Halvorson v. Cnty. of Anoka*, 780 N.W.2d 385, 389 (Minn. App. 2010). When interpreting a statute, our goal is to effectuate the intention of the legislature. Minn. Stat. § 645.16 (2012).

The ULJ concluded that Savard was not entitled to wage credits for his employment with William Mitchell during the 2011 summer because the employment fell "between two successive academic years or terms" under Minn. Stat. § 268.085, subd. 7(a). An applicant for unemployment benefits must establish an account under Minn. Stat. § 268.07. Minn. Stat. § 268.069, subd. 1(1) (2012). To establish a benefit account, the applicant must, among other requirements, have earned a specified minimum dollar amount of "wage credits." Minn. Stat. § 268.07, subd. 2(a) (2012). "Wage credits" are "the amount of wages paid within an applicant's base period for covered employment." Minn. Stat. § 268.035, subd. 27 (2012). Wage credits for school employees are governed by Minn. Stat. § 268.085, subd. 7(a), which provides:

> 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.

Savard argues that Minn. Stat. § 268.05, subd. 7(a), does not apply to him because he is a "permanent, part-time, security officer who happens to work at an educational institution," and his "work schedule does not vary based on the academic calendar." But, in our order opinion, we specifically noted that Savard did not challenge the ULJ's original conclusion that "there is no exemption" in Minn. Stat. § 268.085, subd. 7(a), for year-round employees. *Savard*, No. A11-2014. This court remanded to the ULJ to determine "whether [William Mitchell]'s summer session is 'between two successive academic years or terms,'" *id.*, No. A11-2014, and therefore the issue of whether Minn. Stat. § 268.085, subd. 7(a), applies to year-round employees is not properly before this court, and we decline to consider it.

Savard also argues that "[t]here is no evidence that the college 'summer term' is considered to be a period between academic years or terms" but rather "is part of an academic year and its own term" and that therefore the ULJ erred by concluding that he was not entitled to wage credits for his work at William Mitchell over the summer session. Savard does not dispute that William Mitchell is an educational institute, nor does he argue that he did not have reasonable assurance that he would have continued employment at William Mitchell following the 2011 summer.

Section 268.085, subdivision 7(a), does not define "academic years or term," but this court provided guidance as to when a summer session would fall between academic years or terms in *Halvorson v. Cnty. of Anoka*. In *Halvorson*, this court considered

whether the relator's "employment situation" during a summer term at Pines School, a juvenile-corrections facility, qualified as "being between 'successive academic years' pursuant to Minn. Stat. § 268.085, subd. 7." 780 N.W.2d at 387–88. Pines School's academic calendar followed a typical school calendar, Pines School advanced students by grade levels upon completion of academic years, it offered a summer program with reduced enrollment for remedial classes, it provided breaks before and after the summer term, and it offered continuing full-time employment in the fall. *Id*. at 387, 391.

In *Halvorson*, this court acknowledged that Pines School differed from most schools and that "the school ha[d] often employed teachers through the summer because enrollment demanded it," but this court concluded that the relator failed to establish that Pines School's "academic calendar [was] sufficiently unlike that found in a typical school setting." *Id.* at 390−91. Although the record did not include an academic calendar for Pines School, this court noted that the parties recognized that the school had "traditional fall and spring terms and the presumption that completion of fall and spring terms results in advancement to the next grade"; that it had a "reduced-enrollment summer term designed to allow students to catch up to appropriate grade levels"; and that it had "breaks between each term." *Id*. at 391. This court affirmed the ULJ's conclusion that the relator's summer claim for benefits came between successive academic years. *Id.*

In this case, William Mitchell's representative testified that William Mitchell has fall and spring semesters of equal length and a shortened summer session. She also testified that the summer session is "substantially different" from the fall and spring semesters because it has "lighter class schedules," is shorter, and has about half as many

students enroll in the summer as in the spring and fall; a break occurs between the spring and fall semesters and the summer session; William Mitchell offers commencement only at the end of the fall and spring semesters; and students are classified as 1Ls their first year, 2Ls their second year, and 3Ls their third year, and advance through years 1L, 2L, and 3L at the end of every fall or spring semester. The ULJ found that William Mitchell students could graduate only at the end of a fall or spring semester, which the record evidence substantially supports.

Savard asserts that William Mitchell's summer session is not offered for remedial purposes. He appears to be correct. The William Mitchell representative testified that summer courses count towards the students' degrees and "are not remedial." But, although the summer courses are not offered for remedial purposes, a student may retake a class in the summer session, and section 268.085, subdivision 7(a), does not require that the summer program provide classes solely for remedial purposes. As noted by the ULJ,

> [w]hile not all of [the factors from *Halvorson*] translate perfectly to higher education institutions, applying the elements of *Halvorson* without taking into account higher education credit accumulations would result in all colleges and universities that allow for continued coursework in the summer to be excluded from the wages removal provisions of . . . section 268.085, subdivision 7(a).

Savard asserts that a William Mitchell student may graduate and receive his or her juris doctorate after any semester, including the summer term as long as the student has reached the proper number of credits to do so, which contradicts the ULJ's finding that William Mitchell students can graduate only at the end of the fall and spring semesters. But Savard's assertion is not supported by any record evidence, and the ULJ's finding is

supported by substantial evidence. Substantial evidence is defined as "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002). We view the ULJ's factual findings in the light most favorable to the decision and will not disturb the findings provided that evidence substantially sustains them. *Rowan*, 812 N.W.2d at 882.

At the evidentiary hearing, William Mitchell's representative affirmed that there were "only two times that [a student] can graduate a level and move up or move out of the institution and that's either after fall or spring semester completion." When asked by the ULJ whether a student could graduate at the end of summer, she testified that she was "not able to answer that 100 percent confident." Savard agreed at the hearing with the representative's testimony and did not testify that students could graduate at the end of the summer semester. Viewing the ULJ's factual finding in a light most favorable to the decision, we will not disturb the finding because the evidence substantially sustains it.

We conclude that the ULJ did not err when it determined that William Mitchell's summer program fell between two successive academic years or terms under Minn. Stat. § 268.085, subd. 7(a), and that Savard's educational wages must be removed from his base-period wages from May 15, 2011, to August 20, 2011, and could not be used to calculate his weekly and maximum benefit amounts.

Affirmed.