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

STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1852

Kerri Jaeger,
Respondent,

vs.

University of Minnesota,
Relator,

Department of Employment and Economic Development,
Respondent.

Filed June 28, 2011
Affirmed
Toussaint, Judge

Department of Employment and Economic Development
File No. 25331735-3

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Considered and decided by Toussaint, Presiding Judge; Connolly, Judge; and Willis, Judge.*

UNPUBLISHED OPINION

TOUSSAINT, Judge

Relator University of Minnesota (the University) challenges the decision of the unemployment-law judge (ULJ) that respondent Kerri Jaeger worked in covered employment. Because the ULJ's decision is a correct application of the law, we affirm.

DECISION

This court will affirm the ULJ's decision unless, in relevant part, it is affected by error of law. Minn. Stat. § 268.105, subd. 7(d) (2010). When the relevant facts are undisputed, this court conducts a de novo review of 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). "Statutory interpretation is a question of law that we review *de novo*." *Harms v. Oak Meadows*, 619 N.W.2d 201, 202 (Minn. 2000).

Jaeger enrolled as a doctoral student at the University for the 2009-10 academic year. She registered for 14 credits in both the fall and spring semesters to work on her doctoral thesis, as required, and did not attend any classes. The University awarded Jaeger an administrative fellowship, and one of the benefits of this fellowship was that Jaeger could obtain employment with the University. Jaeger, a licensed psychologist, worked half-time as a staff psychologist, a position which was unrelated to her field of

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

study.

Jaeger applied for unemployment benefits shortly before her fellowship ended. Respondent Minnesota Department of Employment and Economic Development (DEED) conducted a field audit and concluded that the services Jaeger performed for the University were in covered employment so that her wages could be used to establish a benefit account. The University brought an administrative appeal of that decision, contending that Jaeger worked in noncovered employment because she was a student employee. After an evidentiary hearing, the ULJ upheld the result of the field audit, ruled that Jaeger worked in covered employment, and later affirmed that decision on reconsideration.

This appeal requires a determination of whether the services that Jaeger performed for the University were covered or noncovered employment. Before an applicant may receive unemployment benefits, the applicant must establish a benefit account. Minn. Stat. § 268.069, subd. 1(a) (2010). This, in turn, requires that the applicant must have earned a certain minimum amount of wage credits, which are defined as "the amount of wages paid within an applicant's base period for covered employment." Minn. Stat. §§ 268.07, subd. 2 (2010) (requiring a minimum amount of wage credits to establish a benefit account) .035, subd. 27 (2010) (defining wage credits). "Generally, covered employment includes employment performed in Minnesota, unless it is excluded as noncovered employment." *Samuelson v. Prudential Real Estate*, 696 N.W.2d 830, 832 (Minn. App. 2005); *see* Minn. Stat. § 268.035, subd. 12 (2010) (providing definition of "covered employment," which applies unless the employment is excluded as

"noncovered employment" under Minn. Stat. § 268.035, subd. 20 (2010)).

Noncovered employment includes "employment for a school, college, or university by a student who is enrolled and is regularly attending classes at the school, college, or university." Minn. Stat. § 268.035, subd. 20(21). To resolve whether this definition applies to Jaeger, we turn to the rules of statutory interpretation, whose purpose is "to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2010). The first step in this analysis is to determine whether the statutory language at issue is ambiguous. *Scheeler v. Sartell Water Controls, Inc.*, 730 N.W.2d 285, 288 (Minn. App. 2007). "Where the legislature's intent is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and courts apply the statute's plain meaning." *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). "Words and phrases are to be construed according to their plain and ordinary meaning. A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation." *Id.* (quotation and citation omitted).

"Class" is defined as a "group of students who meet at a regularly scheduled time to study the same subject." *The American Heritage Dictionary of the English Language* 352 (3d ed. 1992). The University acknowledges the undisputed fact that Jaeger did not regularly attend "class," as that term is ordinarily defined. But the University nonetheless argues that the term "class" is ambiguous and, for a variety of reasons, should be interpreted to include Jaeger's doctoral-thesis work so that her employment falls within the definition of noncovered employment under subdivision 20(21). But the plain and ordinary meaning of "class" is unambiguous. Thus, no statutory construction is permitted,

and instead the plain meaning of the statute must be applied. *Am. Tower*, 636 N.W.2d at 312. Further, a reviewing court "cannot supply that which the legislature purposely omits or inadvertently overlooks." *Martinco v. Hastings*, 265 Minn. 490, 497, 122 N.W.2d 631, 638 (1963).[1]

In the second step of this analysis, we apply the unambiguous definition of "class" to review the merits of the University's argument. This court has addressed this issue in *Fettes v. Mayo Found. for Med. Educ. & Research*, 547 N.W.2d 423 (Minn. App. 1996). There, the applicant worked during a 24-month fellowship program, which was intended to provide the post-doctoral experience required for licensure in her field. 547 N.W.2d at 424-25. While supervised and evaluated by others, she did not take any academic courses or receive formal classroom education, and she did not receive a degree or academic credits for the fellowship. *Id.* at 424. The University attempts to distinguish *Fettes* because of certain differences between *Fettes* and the present appeal. These differences do not affect the holding that is key to the present appeal, namely, that because the applicant in *Fettes* was not "regularly attending classes," the exclusion for

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[1] As DEED has advised this court, in 2011 the legislature amended subdivision 20(21) so that the following applies to noncovered student employment: "Employment for a school, college, or university by a student who is enrolled and ~~is regularly attending classes at~~ whose primary relation to the school, college, or university is as a student. This does not include an individual whose primary relation to the school, college, or university is as an employee who also takes courses." 2011 Minn. Laws ch. 84, art. 2, § 2 (unofficial version); *see* 2010 Minn. Laws, at v (explaining that strikeouts indicate language to be deleted, while underlining indicates the amended language). As DEED acknowledges, the enactment does not affect the present appeal because the amended subdivision becomes effective on August 1, 2011. *See* Minn. Stat. § 645.02 (2010) (providing that, unless otherwise specified, an act takes effect on August 1 next following its final enactment).

student workers did not apply to her. *Id.* at 425. Similarly, because Jaeger did not regularly attend classes, the definition of noncovered employment in subdivision 20(21) does not apply to her.

In conclusion, under the plain, unambiguous meaning of section 268.035, subdivision 20(21), because Jaeger's work on her doctoral thesis does not constitute "regularly attending classes" and because she did not attend any classes, her employment at the University was not noncovered employment. Instead, as the ULJ ruled, she worked in covered employment.

Affirmed.

Edward Toussaint