COURT OF APPEALS
DECISION
DATED AND FILED

May 16, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP650 **Cir. Ct. No. 2011CV2873**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM AND OFFICE OF STATE EMPLOYMENT RELATIONS,

PETITIONERS-APPELLANTS,

V.

Decision No. 33128CA1

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County: JOHN W. MARKSON, Judge. *Affirmed.*

Before Higginbotham, Sherman and Kloppenburg, JJ.

¶1 SHERMAN, J. The Board of Regents of the University of Wisconsin System and the Office of State Employment Relations (collectively, the Board of Regents) appeal an order of the circuit court affirming the Wisconsin Employment Relations Commission's (WERC) determination that an applicant for

an employment position with the University of Wisconsin-Milwaukee was eligible for veterans' preference points under WIS. STAT. § 230.16(7)(a) (2011-12).[1] We affirm.

BACKGROUND[2]

¶2 In 2009, M.S. applied for a position with the University of Wisconsin-Milwaukee purchasing department. M.S. took the state civil service examination for the position,[3] and claimed eligibility for ten veterans' preference points to be added to his examination score based on his prior military service, which is authorized by WIS. STAT. § 230.16(7)(a). It is undisputed that M.S. enlisted for active duty in the United States Navy on May 20, 1981 for four years, but that on May 20, 1985, M.S.'s enlistment was extended at the request of the federal government for an additional twenty-four months.

¶3 M.S. was initially given the ten veterans' preference points and was ultimately considered as a final candidate for the position. The University informed M.S. that he was a final candidate for the position and asked him to provide a copy of his "Certificate of Release or Discharge from Active Duty," which is commonly referred to as a DD-214,[4] M.S. provided a portion of his

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

[2] The Board of Regents' brief contains only a few citations to the record and the Commission's brief contains none. We admonish both parties that WIS. STAT. RULES 809.19(1)(d) and (e) *require* appropriate citations to the record on appeal.

[3] The examination is given to establish applicants who are eligible for any given position. *See* ***Beghin v. State Personnel Bd.***, 28 Wis. 2d 422, 423, 137 N.W.2d 29 (1965).

[4] A former service member is provided with a DD-214 upon discharge, a copy of which is retained by the Department of Defense. The form summarizes major data with respect to a service member's military history, including honors and awards.

DD-214 and informed the University that he had received "a less than honorable discharge" from the military. The portion of the form provided by M.S. identified, among other things, the "decorations, medals, badges, citations and campaign ribbons awarded" to M.S., including his "good conduct award for [the service] period ending" on May 19, 1985, the date his original four-year enlistment had been scheduled to end. The portion of the form provided by M.S. did not include the bottom of the form, which contains "special additional information" that is "[f]or use by authorized agencies only." That portion of the form includes spaces where the "type of separation," "character of service," and "narrative reason for separation" can be specified. The bottom portion of M.S.'s form indicates that his "type of separation" was a "discharge[]," that the "character of service" was "bad conduct," and that the "reason for separation" was a "conviction by special court martial." No further details are provided in the form, or otherwise appear in the record.

¶4 After M.S. provided the University with a portion of his DD-214 form and advised the University that he had received a less than honorable discharge, the University advised M.S. that he did not qualify for veterans' preference points because he did not qualify as a veteran as that term is defined in WIS. STAT. § 230.03(14)(d). As a result, M.S. was disqualified from consideration for the position for which he had applied and was not hired.

¶5 M.S. appealed the University's decision to deny him veterans' preference points to a hearing officer with WERC. The hearing officer upheld the University's decision and M.S. appealed the hearing officer's decision to WERC, which reversed the hearing officer's decision regarding M.S.'s eligibility for veterans' preference points. WERC determined that M.S. was a "veteran" as that term is defined by WIS. STAT. § 230.03(14)(d) and that M.S. was thus entitled to

veterans' preference points. The Commission ordered the University to appoint M.S. to the purchasing agent position if the position was vacant or to the next available similar position if it was not. The Board of Regents sought review of WERC's decision by the circuit court, which upheld WERC's decision. The Board of Regents appeals.

DISCUSSION

¶6 The issue in this case is whether M.S. was entitled to receive veterans' preference points under WIS. STAT. § 230.16(7)(a), with respect to his application for employment with the University, as determined by WERC.

¶7 On appeal of a decision of an administrative agency, we review the decision of the agency, not the decision of the circuit court. *See* ***Hilton v. DNR***, 2006 WI 84, ¶13, 293 Wis. 2d 1, 717 N.W.2d 166. We will uphold an agency's findings of fact as long as substantial evidence supports the findings. ***Hedlund v. DHS***, 2011 WI App 153, ¶21, 337 Wis. 2d 634, 807 N.W.2d 672. Under this standard, "an agency's findings of fact may be set aside only when a reasonable trier of fact could not have reached them from all the evidence before it, including the available inferences from that evidence." ***Id.*** The application of those factual findings to the legal standard is a question of law, which this court reviews de novo. *See* ***State v. Lala***, 2009 WI App 137, ¶8, 321 Wis. 2d 292, 773 N.W.2d 218.

¶8 The Board of Regents challenges WERC's decision with regard to the proper interpretation of the term "veteran" for purposes of WIS. STAT. § 230.16(7)(a). Statutory interpretation is ordinarily subject to our independent review. ***Racine Harley-Davidson, Inc. v. State Div. of Hearings & Appeals***, 2006 WI 86, ¶11, 292 Wis. 2d 549, 717 N.W.2d 184. However, when reviewing an

agency's interpretation of a statute, we accord the agency's interpretation one of three levels of deference—no weight, due weight, and great weight. ***Id.***, ¶¶11-19 (explaining that three levels of deference may apply and listing the different standards for each). Here, the parties dispute the appropriate level of deference to be applied to WERC's decision. However, we need not resolve that dispute on appeal because we reach the same result regardless of the level of deference applied.

¶9 "[S]tatutory interpretation 'begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry.'" ***State ex rel. Kalal v. Circuit Court of Dane Cnty.***, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110 (quoted source omitted). "Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning." ***Id.*** In addition, "statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." ***Id.***, ¶46.

¶10 WISCONSIN STAT. § 230.16(7)(a) provides that, with regard to applications for state employment and civil service examinations, preference shall be given to certain classifications of individuals, including veterans. That section provides in relevant part:

> A preference shall be given to those veterans ... specified in subds. 1 to 6 who gain eligibility on any competitive employment register and who do not currently hold a permanent appointment or have mandatory restoration rights to a permanent appointment to any position. A preference means the following:

1. For a veteran, that 10 points shall be added to his or her grade.

Veteran is defined for purposes of ch. 230 as follows: "Except as provided in s. 230.16(7m),[5] veteran means any of the following ... (d) *A person who served on active duty under honorable conditions in the U.S. armed forces for 2 continuous years or more or the full period of the person's initial service obligation, whichever is less.*" WIS. STAT. § 230.03(14)(d) (emphasis added).

¶11 The dispute in this case concerns whether M.S. served at least two years or the full period of his initial service obligation under honorable conditions. The parties agree that at the end of the first four years of M.S.'s enlistment, M.S received a "good conduct award" and that when M.S. was discharged from the military two years later, after his enlistment was extended for 24 months at the request of the government, his "service" was characterized as "bad conduct." The Board of Regents argues that WERC interpreted § 230.03(14)(d) incorrectly in concluding that because M.S. received a "good conduct award" after his first four years of service, he served under honorable conditions during that time period. The Board of Regents argues that because the bottom section of M.S.'s DD-214, which sets forth information pertaining to M.S.'s separation from the military, describes M.S.'s "character of service" as "bad conduct," M.S. cannot be considered to have served any period of active duty under honorable conditions for purposes of WIS. STAT. § 230.03(14)(d). The

[5] WISCONSIN STAT. § 230.16(7m) addresses under what circumstance an application submitted by a veteran after the application's due date will be accepted. In paragraph (a), the legislature defined the meaning of "veteran" "in [that] subsection." That definition is therefore not relevant to our analysis.

Board of Regents' interpretation, however, ignores the plain language of the statute.[6]

¶12 In defining who constitutes a veteran for purposes of ch. 230, including WIS. STAT. § 230.16(7)(a), WIS. STAT. § 230.03(14)(d) directs that two periods of time be considered—either the person's full initial service obligation or two continuous years or more of service, whichever is less. Nothing in the plain language of the statute limits consideration to the character of an individual's service only upon discharge from the military, regardless of whether discharge occurred later than two continuous years or after a person's full initial service obligation, as in this case. Rather, the plain language of the statute directs us to consider the nature of a person's service after at least two continuous years, or after the end of the person's *initial* enlistment period, whichever is less, both of which may be less than the number of years a person served in the military at the time of his or her discharge. Were we to adopt the Board of Regent's interpretation, in situations such as this, where a service member served in the military for a period of more than two years, its interpretation would render superfluous the statute's language pertaining to consideration of service periods less than a former service member's initial enlistment period; and in many other situations, the Board of Regent's interpretation would render superfluous the statutory language pertaining to consideration of a service member's *initial*

[6] The Board of Regents directs us to extraneous legal sources, including federal cases interpreting the federal Veterans' Preference Act, to determine the meaning of "veteran" for purposes of obtaining veterans' preference points under WIS. STAT. § 230.16(7)(a). However, because we find the definition of "veteran" in WIS. STAT. § 230.03(14)(d) to be plain and unambiguous, we do not look beyond the plain language of the statutes. *See* ***Lake City Corp. v. City of Mequon***, 207 Wis. 2d 155, 163, 558 N.W.2d 100 (1997) (if a meaning of a statute is clear from its language, we are prohibited from looking beyond such language to ascertain its meaning).

enlistment period. It is a basic rule of statutory construction that effect is to be given to every word of a statute if possible, so that no portion of the statute is rendered superfluous. ***Lake City Corp. v. City of Mequon***, 207 Wis. 2d 155, 162, 558 N.W.2d 100 (1997).

¶13 The Board of Regents asserts that even if the characterization of M.S.'s service upon discharge from the military as "bad conduct" is not conclusive of the nature of his service for either his initial enlistment period or two continuous years of service, the fact that M.S. received a "good conduct award" after the first four years of his service is not evidence that he served under honorable conditions for at least two years. The Board of Regents argues that the record does not support WERC's finding that a "good conduct award" equates to having served "under honorable conditions" because "nothing in the record conclusively show[s] that a recipient of the Navy good conduct award served 'under honorable conditions' for the period of that award." However, in reviewing an administrative agency's factual findings, we do not look for whether the evidence conclusively supports the agency's findings, but instead for whether the findings are supported by substantial evidence in the record. ***Hedlund***, 337 Wis. 2d 634, ¶21. "This test means that taking into account all of the evidence in the record, we inquire whether reasonable minds could arrive at the same conclusion as the agency did." ***Id.*** If the administrative agency's factual findings are reasonable, they will be upheld. ***Id.***

¶14 Evidence in this case shows that M.S.'s Navy Good Conduct Award requires four years of continuous active service, "a clear record (no convictions by courts-martial, no non-judicial punishments [], no lost time by reason of sickness-misconduct, no civil convictions for offenses involving moral turpitude)," and the attainment of certain performance marks. *See* Secretary of

the Navy Instruction 1650.1G. As noted by the circuit court, no evidence was presented that M.S.'s service was anything other than honorable during the first four years of his service. Accordingly, we conclude that WERC's finding that M.S. served under honorable conditions during the first four years of his military service was supported by substantial evidence.[7]

¶15 In conclusion, because: (1) it is undisputed that at the end of the first four years of M.S.'s enlistment period, M.S. was awarded a "good conduct award" by the Navy; and (2) WERC's finding that this award is evidence that M.S. served under honorable conditions was supported by substantial evidence, we conclude that MS served more than two years under honorable conditions and affirm WERC's decision.

CONCLUSION

¶16 For the reasons discussed above, we affirm.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

[7] Although not part of the record, and not relied upon in reaching our decision, we take judicial notice that Executive Order Nos. 8809 (June 28, 1941) and 10444 (Apr. 10, 1953) authorize the Navy Good Conduct Medal to be awarded to those who have "honorably completed" a specified period of active federal military service. Http://www.archives.gov/federal-register/codification/executive-order/08809.html (last visited May 14, 2013).