

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0005**

City of White Bear Lake,
Relator,

vs.

Amy E. Kriegshauser,
Respondent,
Public Employees Retirement Association of Minnesota,
Respondent.

**Filed September 11, 2023
Affirmed
Reyes, Judge**

Office of Administrative Hearings
File No. 20-3600-37456

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Considered and decided by Reyes, Presiding Judge; Ross, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

The Public Employees Retirement Association (PERA) determined that respondent-firefighter was duty disabled under Minn. Stat. section 353.01, subdivision 41 (2022), requiring relator-city to continue providing health-insurance coverage under Minn. Stat. § 299A.465 (2022), after respondent suffered an injury while responding to a structure fire. Relator now appeals from an Administrative Law Judge (ALJ) decision affirming PERA's determination. We affirm.

FACTS

Respondent Amy E. Kriegshauser was a firefighter and paramedic concurrently employed by the City of Hugo and relator City of White Bear Lake (WBL). In 2015, Kriegshauser began employment with WBL, and she became a full-time firefighter and paramedic for WBL a few years later. Through WBL, Kriegshauser received health insurance and also contributed to the public employees police and fire retirement plan (PERA's police and fire plan). Kriegshauser became a paid on-call volunteer firefighter for Hugo in 2013, which required her to respond to 25 percent of the calls made for firefighter assistance per year. She maintained pagers for both cities.

WBL and Hugo have a Reciprocal Emergency Services Agreement. The purpose of the reciprocal agreement is "to provide the best possible emergency services and automatic response to reported structure and building fires for residents" and "to make equipment, personnel, and other resources available to both departments." Specifically,

each fire department will respond to structure fires in the other community when called upon.

Kriegshauser's Injury

On April 23, 2019, a structure fire in Hugo prompted a call to both paid on-call firefighters and firefighters from communities that had agreements for reciprocal service with Hugo. As a result, both of Kriegshauser's pagers alerted her: the first alert went to her Hugo pager, then a second to her WBL pager. Kriegshauser answered the Hugo page, in part to satisfy her 25-percent-call-response requirement, and arrived at the fire scene in Hugo gear and in a Hugo fire truck. The Hugo fire chief was the on-scene commander. After reassignment from one side of the structure to another, Kriegshauser operated under the direction of the WBL fire chief, G.P., who was supervising firefighters on that side of the building. She followed G.P.'s orders to enter the basement of the structure by ladder with a WBL fire captain. Once inside, Kriegshauser was chest-deep in water while wearing full gear, which weighed approximately one hundred pounds. Because it was unsafe, Kriegshauser ascended a ladder to exit the basement but felt her knee buckle. A few days after the fire, Kriegshauser filed a first report of injury with Hugo. Kriegshauser later learned that she severely injured her knee and femur.

Hugo and the League of Minnesota Cities Insurance Trust accepted liability and provided Kriegshauser with workers' compensation benefits. Kriegshauser underwent multiple knee surgeries, various rehabilitation efforts, and a full knee replacement. She attempted to return to work as a WBL firefighter, but she experienced pain and swelling

that prevented her from performing her job. In April 2020, WBL terminated Kriegshauser's employment, and Kriegshauser has not returned to work as a firefighter.

PERA Proceedings

In May 2020, Kriegshauser submitted her PERA application for duty-disability benefits. PERA initially awarded only regular-disability benefits. Kriegshauser then retained counsel to file a request for reconsideration. PERA reviewed additional information submitted by Kriegshauser and reversed its initial determination, awarding Kriegshauser duty-disability benefits and notifying WBL of its obligation to provide ongoing health-insurance benefits.

ALJ Proceedings

WBL challenged the PERA determination. The ALJ held a contested-case hearing. In a subsequent order, the ALJ determined that WBL failed to prove, by a preponderance of the evidence, that Kriegshauser did not sustain a duty disability. As a result, WBL was "responsible for continuing to provide health insurance coverage for [Kriegshauser] and her dependents and for continuing to pay its contribution for that coverage pursuant to Minn. Stat. § 299A.465." This appeal follows.

DECISION

There are two issues we need to address on this appeal: whether the ALJ appropriately decided that (1) Kriegshauser suffered a duty disability under Minn. Stat. section 353.01, subdivision 41, and (2) WBL was Kriegshauser's "employer" under Minn.

Stat. section 299A.465, subdivision 1(c), and is therefore obligated to continue providing Kriegshauser and her dependents with health-insurance coverage.¹

This appeal concerns the meaning of “duty disability” under section 353.01, subdivision 41, and as applied under section 299A.465, subdivision 1. We therefore begin by examining PERA generally and the role of statutes providing disability benefits. In Minnesota, PERA administers retirement and disability benefits for employees who work for governmental employers. *See generally* Minn. Stat. § 353.01 (2022). Full-time firefighters must participate in PERA’s police and fire plan. *See* Minn. Stat. § 353.64, subd. 1 (2022).

When a firefighter who is a member of the PERA plan suffers a qualifying disability, the firefighter is entitled to receive disability benefits during the period of disability. Minn. Stat. § 353.656, subd. 1 (2022). PERA offers two primary types of disability benefits to firefighters: “regular disability” benefits and “duty disability” benefits. Minn. Stat. § 353.656, subds. 1, 3 (2022). To qualify for duty-disability benefits, a firefighter must have a duty disability as defined by section 353.01, subdivision 41. Minn. Stat. § 353.656, subd. 1(a).

[A duty disability,] physical or psychological, means a condition that is expected to prevent a member, for a period of not less than 12 months, from performing the normal duties of the position held by a person who is a member of the public employees police and fire retirement plan, and that is the direct result of an injury incurred during, or a disease arising out of, the performance of *inherently dangerous duties that are*

¹ WBL does not frame the issues in this way, but we conclude that this approach allows for a comprehensive review of WBL’s arguments.

specific to the positions covered by the public employees police and fire retirement plan.

Minn. Stat. § 353.01, subd. 41 (emphasis added).

A firefighter may apply to PERA for duty-disability benefits. *See generally* Minn. Stat. § 353.031 (2022) (covering application and decision procedures for duty-disability-benefits applications). If PERA grants a firefighter’s application for duty-disability benefits, the firefighter is statutorily entitled to continue to receive health-care coverage funded by the firefighter’s employer, in addition to disability benefits funded by PERA.² *See* Minn. Stat. § 299A.465, subd. 1(a)(1), (c), (d). The employer may, within 60 days of the final determination, request a contested-case hearing before an ALJ to challenge the determination. Minn. Stat. § 299A.465, subd. 1(b)(2)-(3).

The ALJ’s decision following the contested-case hearing is the final administrative decision under Minn. Stat. section 14.62, subdivision 2a (2022), and is subject to certiorari review by this court under Minn. Stat. §§ 14.63-.68 (2022). Minn. Stat. § 299A.465, subd. 1(b)(3). Because WBL challenges the ALJ’s final determination that Kriegshauser was duty disabled and the accompanying obligation that WBL continue providing Kriegshauser with health-insurance coverage, we apply our standard of review for agency decisions. *See* Minn. Stat. § 299A.465, subd. 1(b)(3) (allowing judicial review of “a final determination made by the Office of Administrative Hearings” regarding an employer’s obligation to provide continued health-insurance coverage to a firefighter disabled in the line of duty);

² PERA’s payment of duty-disability benefits to Kriegshauser was not at issue before the ALJ or part of this appeal.

In re PERA Salary Determinations Affecting Retired & Active Emps. of City of Duluth, 820 N.W.2d 563, 569 (Minn. App. 2012) (stating that, because PERA is analogous to an administrative agency, we review PERA decisions using our standard of review for agency decisions); *see also* Minn. Stat. § 14.63 (2022) (providing right to judicial review of final agency decision in contested case).

The scope of our review following a contested-case hearing before an ALJ is provided by statute. *See* Minn. Stat. § 14.69 (2022). We may affirm the agency’s decision, remand for further proceedings, or reverse or modify the agency’s decision. *Id.*

I. The ALJ did not err by determining that Kriegshauser suffered a duty disability under Minnesota Statutes section 353.01, subdivision 41.

WBL argues that the statute is unambiguous and that, applying its plain language to the circumstances here, Kriegshauser’s injuries do not result in a duty disability. Because we conclude that the statute is ambiguous and therefore defer to PERA’s reasonable interpretation, we disagree.

Appellate courts “retain the authority to review de novo errors of law which arise when an agency decision is based upon the meaning of words in a statute.” *Greene v. Comm’r of Minn. Dep’t of Human Servs.*, 755 N.W.2d 713, 721 (Minn. 2008) (quotation omitted). The primary objective of statutory interpretation is to ascertain and give effect to the intention of the legislature. Minn. Stat. § 645.16 (2022). In ascertaining legislative intent, “we give effect to the plain meaning of statutory terms.” *Ill. Farmers Ins. Co. v. Glass Serv. Co.*, 683 N.W.2d 792, 803 (Minn. 2004); *see* Minn. Stat. § 645.08 (2022).

Minnesota Statutes section 353.01, subdivision 41, states that a firefighter sustains a “duty disability” if (1) that firefighter is a member of PERA’s police and fire plan; (2) the firefighter has a physical or psychological condition; (3) the condition “is the direct result of an injury incurred during . . . the performance of inherently dangerous duties;” (4) those duties “are specific to the positions covered by” PERA’s police and fire plan; and (5) the condition is expected to prevent them from performing the normal duties of their position for a period of at least 12 months.

The parties agree that Kriegshauser is a member of PERA’s police and fire plan, that her knee injury was the result of performing inherently dangerous duties, and that the injury is expected to prevent her from performing the normal duties of her position for a period of at least 12 months. The parties only disagree about the interpretation of “*duties* that are specific to the *positions* covered by” the plan. Minn. Stat. § 353.01, subd. 41 (emphasis added).

We begin our statutory interpretation by determining whether the statute is ambiguous. *See In re PERA Police & Fire Plan Line of Duty Disability Benefits of Brittain*, 724 N.W.2d 512, 516 (Minn. 2006). “A statute is only ambiguous when it is subject to more than one reasonable interpretation. A court must give a plain reading to any statute it construes, and when the language of the statute is clear, the court must not engage in any further construction.” *State v. McCoy*, 682 N.W.2d 153, 159 (Minn. 2004) (quotation and citation omitted).

Although both parties assert that section 353.01, subdivision 41, is unambiguous, they provide conflicting interpretations of its meaning. According to WBL, a duty-

disability determination “hinges on the following question: for what position was Ms. Kriegshauser performing firefighter services at the time of her injury.” Kriegshauser asserts that WBL’s interpretation is inconsistent with the plain language and that the definition of “duty disability” hinges on “the duties performed, not for whom the duties were performed.”

As part of its plain-language interpretation of duties “specific to the positions covered by” the plan, WBL highlights the difference between “regular disability” and “duty disability” under the statute. Under the statute

[A regular disability,] physical or psychological, means a condition that is expected to prevent a member, for a period of not less than 12 months, from performing the normal duties of the position held by a person who is a member of the public employees police and fire plan, and *which results from a disease or an injury that arises from any activities while not at work*, or while at work and performing those normal or less frequent duties that do not present inherent dangers that are specific to the occupations covered by the public employees police and fire plan.

Minn. Stat. § 353.01, subd. 46 (emphasis added).

WBL asserts that this definition means that “the only reasonable interpretation” of duties “specific to the positions covered” requires review of *where* the injury occurred and, by extension, means that if an injury did not occur *while at work*, it “clearly qualifies” as a regular disability, not a duty disability. WBL asserts that, because Kriegshauser was not working or on duty for WBL at the time of her injury, the plain language indicates that Kriegshauser’s injury does not qualify as a duty disability and, instead, is a regular disability. WBL argues that this interpretation is supported by the guidance to read statutes

“as a whole to harmonize all its parts, and, whenever possible, no word, phrase or sentence should be deemed superfluous, void or insignificant.” *Kremer v. Kremer*, 912 N.W.2d 617, 623 (Minn. 2018).

Kriegshauser asserts that WBL’s interpretation is in conflict with the plain language of the statute. Specifically, Kriegshauser contends that WBL’s interpretation “add[s] requirements to the definition of a ‘duty disability’ that do not exist,” by reading into the statute that the disabling injury must be incurred “while at work” for the PERA-covered employer. Kriegshauser notes that WBL is trying to read language into the duty-disability definition that the legislature did not include. However, courts cannot add to the statute “what the legislature purposely omits or inadvertently overlooks.” *Renstrom v. Indep. Sch. Dist. No. 261*, 390 N.W.2d 25, 27 (Minn. App. 1986) (quotation omitted). Moreover, because the legislature differentiated between “while not at work” and “while at work” in its description of regular disability, if the legislature had wanted to include the at-work distinction, it could have included it in the statutory definition of duty disability. See *Rohmiller v Hart*, 811 N.W.2d 585, 590-91 (Minn. 2012).

Because both WBL and Kriegshauser provide reasonable interpretations of the statute and the statute’s application to Kriegshauser’s specific situation is unclear, we conclude that it is ambiguous. See *McCoy*, 682 N.W.2d at 158-59; *Walgreens Specialty Pharmacy, LLC v. Comm’r of Revenue*, 916 N.W.2d 529, 533 (Minn. 2018). If a statute is ambiguous, an appellate court may accord deference to the reasonable interpretation by an agency charged with administering it. *In re Cities of Annandale & Maple Lake NPDES/SDS Permit Issuance for Discharge of Treated Wastewater*, 731 N.W.2d 502, 514-

15 (Minn. 2007); *Brittain*, 724 N.W.2d at 517. Because PERA’s interpretation is reasonable, we defer to its interpretation.

In PERA’s letter informing WBL of the duty-disability determination, PERA stated, “Duties such as firefighting constitute firefighter duties that are inherently dangerous and specific to [firefighter] positions. Reporting physicians indicate that these events are what caused disability, and that the disability will last for at least one year, qualifying [Kriegshauser] for duty disability under Minn. Stat. § 353.01, subd. 41.” The disability coordinator for PERA also testified at the contested-case hearing about PERA’s determination. She explained that “the statute states that . . . the individual just has to be in the position of fighting that fire at the time of injury, not that [they] need[] to be working for a [particular] employer as long as they are a member of the police and fire plan.”

Because the meaning of duties “specific to the positions covered by” the plan is doubtful with two reasonable interpretations provided by the parties, we give great weight to the meaning placed upon the term by PERA. *See Goodman v. State, Dep’t of Pub. Safety*, 282 N.W.2d 559, 560 (Minn. 1979) (reviewing court’s practice when faced with ambiguous statute “is to accord substantial consideration to the interpretation of the administrators working daily with the problem sought to be remedied”). We conclude that the ALJ did not err by relying on PERA’s interpretation of the statute and determining that Kriegshauser’s injury qualifies as a duty disability.³

³ WBL also asserts a policy argument that PERA provided a “broad-brush” interpretation of the duty-disability definition that ignores “the identity of the actual employer at the time of the injury” and other circumstantial facts, that will “undoubtedly adversely impact established firefighter practices and resources statewide” and lead to an absurd result.

II. The ALJ did not err by determining that WBL is Kriegshauser’s “employer” under Minnesota Statutes section 299A.465, subdivision 1(c).

WBL argues that the ALJ’s determination affirming PERA’s decision that Kriegshauser is entitled to continued health-insurance benefits from WBL under section 299A.465, subdivision 1(c), is arbitrary and capricious and contrary to the law. We disagree.

“An agency’s decision is arbitrary or capricious when it represents the agency’s will and not its judgment.” *In re Schmalz*, 945 N.W.2d 46, 54 (Minn. 2020) (quotation omitted).

A decision is arbitrary and capricious when the agency:

- (a) relied on factors not intended by the legislature; (b) entirely failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency’s expertise.

Id. (quotation omitted).

In addition, a finding that lacks the support of substantial evidence may be arbitrary and capricious if the “offered . . . explanation . . . runs counter to the evidence.” *Id.* (quotation omitted). We will not lightly interfere with administrative decisions, nor will we reweigh evidence. *See In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001).

WBL highlights the adverse economic impact PERA’s interpretation would have on cities whose employees have part-time jobs with other cities. Even if we were to consider WBL’s policy concerns, they will likely be alleviated due to changes made to the statute during the 2023 legislative session. Effective July 1, 2023, public employers may annually apply to the commissioner of public safety to reimburse employers for continuing insurance coverage. *See* 2023 Minn. Laws ch. 48, sec. 2.

Minnesota statutes section 299A.465, subdivision 1(c), provides

(c) The officer's or firefighter's employer shall continue to provide health coverage for:

(1) the officer or firefighter; and

(2) the officer's or firefighter's dependents if the officer or firefighter was receiving dependent coverage at the time of the injury under the employer's group health plan.

Under this statute, the “employer shall continue to provide health coverage” unambiguously means the employer that provided health coverage at the time of the injury. Here, there is no dispute that WBL provided health coverage at the time of injury as Kriegshauser's employer. WBL is the only “employer” that could *continue* to provide Kriegshauser with health-insurance coverage. Thus, the ALJ's statement in a memorandum accompanying the order identifying WBL as Kriegshauser's employer responsible for providing continuing health coverage was not contrary to the applicable law or the evidence presented during the contested-case hearing:

[WBL] was the employer that was providing health insurance coverage for [Kriegshauser] and her dependents, and that was paying its contribution for that coverage, at the time [Kriegshauser] was injured. In addition, the fact that [Kriegshauser] was acting under the supervision of [WBL] Fire Chief when she was injured, supports the conclusion that [WBL] was [Kriegshauser's] employer for purposes of Minn. Stat. § 299A.465.

WBL takes issue with the second part of this statement. WBL argues that the ALJ's order “hangs its hat on the fact that WBL [fire chief] instructed Ms. Kriegshauser to enter the basement where the injury occurred.” But this assessment is inaccurate for two reasons. First, WBL's argument ignores the ALJ's explicit acknowledgment that Kriegshauser was concurrently employed as a full-time firefighter for WBL and as a volunteer firefighter for

Hugo. This nuance was not ignored by the ALJ, as evidenced by the ALJ's request, during the contested-case hearing, for authority that addresses duty-disability determinations when there are multiple employers. Second, the statement is supplementary rather than a determinative consideration related to *identifying Kriegshauser's employer who provided her with health insurance* on the date of the injury for the purposes of section 299A.465.

In sum, we conclude that, under the facts specific to this case, the ALJ did not err by determining that WBL is required to continue providing Kriegshauser with health-insurance coverage as Kriegshauser's "employer" under section 299A.465, subdivision 1(c).

Affirmed.