

*This opinion is nonprecedential except as provided by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
A24-1333**

In the Matter of the Appeal of the determination
of the Responsible Authority for the Minnesota Department of Transportation
that certain data about Mao Yang are accurate and/or complete.

**Filed June 9, 2025
Affirmed; motion denied
Bentley, Judge**

State of Minnesota Administration Department
File No. 22-3000-39310

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Considered and decided by Bentley, Presiding Judge; Ede, Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

BENTLEY, Judge

Relator Mao Yang brings this certiorari appeal from the summary-disposition dismissal of her contested case related to the accuracy and completeness of employment data held by her employer, respondent Minnesota Department of Transportation (MnDOT). Yang argues that the administrative law judge's (ALJ) recommendation for summary disposition and a Department of Administration (DOA) decision adopting that recommendation were erroneous because fact issues preclude summary disposition. She

also raises other issues that are related to her employment but unrelated to the challenged employment data. We affirm.

FACTS

This case is about the accuracy and completeness of a job position description and performance review concerning Yang, an employee of MnDOT. The relevant position is the State Aid Projects Engineer in MnDOT's Office of State Aid.¹ The record before the ALJ and DOA, viewed in the light most favorable to Yang, reflects the following facts.²

When Yang was hired as the Projects Engineer in May 2019, the State Aid organizational chart conveyed that she would supervise the State Aid Pavement Engineer. Within her first year of employment, the organizational chart conveyed that she would also supervise the Local Agency Support Engineer. Both positions were vacant as of March 2020. Yang began the process to hire the Pavement Engineer. But before the position was filled, MnDOT enforced a hiring freeze because of the COVID-19 pandemic.

Yang fell ill in early 2021 and went on medical leave from mid-February to mid-April of that year. When she returned to work, she "initiated the ADA accommodations process" and submitted a request to have a medically reduced workload from July 2021 to June 2022, which was approved.

¹ According to MnDOT, the Office of State Aid manages and oversees local bridge replacements, among other things.

² "When reviewing a summary-disposition decision, appellate courts view the facts in the light most favorable to the party against whom summary disposition was granted." *In re Lannon*, 984 N.W.2d 575, 578 n.1 (Minn. App. 2022).

In July 2021, Yang met with her direct supervisor, M.V., to discuss State Aid's staffing needs. M.V. told Yang that the Local Agency Support Engineer position would remain vacant. As for the Pavement Engineer position, M.V. stated that Yang and another employee, B.M., would share the supervisory responsibilities. Yang "questioned and challenged" that decision because she believed that her "essential responsibilities chang[ed] during the ADA process."

In November 2021, M.V. emailed Yang a description of the position that she and B.M. were to supervise. The title of the role was changed from Pavement Engineer to Assistant Projects Engineer. M.V. reiterated that Yang would work with B.M. to supervise the Assistant Projects Engineer.

In January 2022, Yang met with M.V. to review her performance. In a written performance review that Yang received afterward, her performance of specific "Expectations" was rated based on "Key Performance Indicators/Measures" and corresponding "Results Achieved." Under a catch-all expectation entitled "Other Duties as Assigned," the performance review listed one indicator: "Hiring of State Aid Assistant Projects Engineer." The "Results Achieved" associated with that indicator stated, "Position has not yet been filled." Yang was rated "I" for "Needs Improvement" for that expectation.

The performance review also contained a section on "MnDOT's Shared Competencies." One of the competencies, "Character," captures "traits of self-awareness, integrity, humility, accountability, dependability, and trustworthiness. Leads by example and demonstrates respect for all." Yang was rated as "I" for "Needs Improvement." The review explained, "This past year has resulted in several events when [Yang] has not

exhibited accountability or dependability. These events include not filling the State Aid Assistant Project Engineer position[.]”

In March 2022, Yang emailed a MnDOT human resources (HR) employee requesting “an updated [position description] . . . so that [she] can plan and remove tasks that are no longer [her] responsibilities.” The HR employee sent a position description that described a purpose of Yang’s position as, “To supervise the State Aid [Assistant Projects Engineer] and pavement support program.”

Yang asked for “clarification” as to why the position description stated that she was responsible for supervising the Assistant Projects Engineer. The HR employee stated that, per Yang’s supervisor, she was “still responsible for providing leadership and supervisory responsibilities” for the Assistant Projects Engineer, even though “the system can only show one actual supervisor.” More specifically, the HR employee explained that both Yang and B.M. would jointly supervise the position and “should collaborate on performance reviews, performance management, etc. Since [B.M.] is the primary supervisor in the system, he will be responsible for timesheet approval.”

In August 2022, M.V. sent a “letter of expectations” to Yang. The letter stated that Yang was expected to “[w]ork collaboratively with [her] co-supervisor for the State Aid Assistant Projects Engineer position to provide work directives, guidance, and direction for all roles, tasks, and responsibilities related to [her] area of charge.” The letter also directed Yang to “[p]erform [her] supervisory duties as a co-supervisor for the State Aid Assistant Projects Engineer position[.]”

In September 2022, Yang contested the accuracy and completeness of her position description and 2022 performance review. She cited a provision in the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. § 13.01-.991 (2024), that permits individuals to “contest the accuracy or completeness of public or private data about themselves.” Minn. Stat. § 13.04, subd. 4(a). Yang directed her MGDPA request to the responsible authority for data practices at MnDOT. *See* Minn. Stat. § 13.02, subd. 16(a) (defining “responsible authority” in a state agency to mean “the state official designated by law or by the commissioner as the individual responsible for the collection, use, and dissemination of any set of data on individuals, government data, or summary data”). With respect to the position description, Yang asked to delete “two statements that . . . refer to supervisory responsibilities.” For the performance review, Yang asked to delete the sections labeled “Other Duties as Assigned” and “Character,” and the ratings from those sections. The responsible authority responded with a letter stating that the data are accurate and the performance review ratings “cannot be assessed for their accuracy or completeness because they reflect the subjective judgment of the appraiser.”

In October 2022, Yang again contested the accuracy of her position description and 2022 performance review. She requested two similar edits to her position description. In the section titled “Position Purpose,” she requested the following edit: “To ~~supervise~~ co-supervise along with the primary co-supervisor the State Aid Assistant Projects Engineer.” And in the section titled “Reportability,” she requested the following: “~~Supervises~~ Co-Supervise with Primary Co-Supervisor: State Aid Assistant Projects Engineer.” Similarly, Yang requested that her 2022 performance review reflect that she was a co-supervisor.

Yang requested that her duties be edited to the following description: “Hiring of State Aid Assistant Projects Engineer with Primary Co-Supervisor.” In the section about results achieved for the that duty, Yang requested the following: “Position has not yet been filled by both Co-Supervisors.” The responsible authority again determined that the data were accurate and did not warrant any changes.

In March 2023, Yang appealed MnDOT’s determination to the DOA. Yang argued that “[t]he position description should reflect the supervisor role/direct report roles,” and that co-supervisors “cannot be reflected in SEMA4 and there is no such co-supervisor training in the state agency training or policies.”³ Yang also stated that her “position as a Veteran is one of the reasons for [her] data challenge,” and she asked that her request be reviewed under the Minnesota Veterans Preference Act, Minn. Stat. § 197.46 (2024). The Veterans Preference Act provides that honorably discharged veterans “holding a position . . . in the state civil service” may not be removed from their “position or employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, in writing.” Minn. Stat. § 197.46(a).

The DOA scheduled a hearing. MnDOT moved for summary disposition, arguing that there was no genuine issue of material fact about the accuracy and completeness of the data. Yang maintained that there was a fact issue as to whether her position description and

³ According to MnDOT, SEMA4 “is the payroll, human resources, and benefits system used by the State of Minnesota.”

performance review were accurate because her position and duties changed from supervisor to co-supervisor.

After a motion hearing, an ALJ recommended granting MnDOT's motion for summary disposition. In its memorandum, the ALJ explained that "[t]he challenged position description and performance appraisal are reasonably correct and free from error, and they reasonably reflect the history of [Yang's] transactions with [MnDOT]." The DOA adopted the ALJ's memorandum in its entirety and issued an order granting MnDOT's motion for summary disposition. Yang petitioned this court for a writ of certiorari.⁴

DECISION

Yang argues that summary disposition was inappropriate because there is a genuine issue of material fact: whether it was accurate and complete for the position description and performance review to refer to her as a "supervisor" rather than a "co-supervisor." She also makes several arguments that do not relate to the accuracy and completeness of the position description and performance review.

Under the MGDPA, data are accurate if they are "reasonably correct and free from error." Minn. R. 1205.1500, subp. 2(A) (2023). Data are complete if they "reasonably

⁴ MnDOT moved this court to strike portions of Yang's brief, including a graphic comparing MnDOT's 2019 and 2023 organizational charts and her discussion of the removal of responsibilities in her 2022 position description and her union representation. Yang also moved this court to resubmit her reply brief to assign a different label to the graphic and resubmit her response to the motion to strike with a revision to the cover page. We deny the motions as moot because we do not rely on the challenged portions of Yang's brief in reviewing the DOA's grant of summary disposition. *See Justice v. Marvel, LLC*, 979 N.W.2d 894, 903 n.9 (Minn. 2022) (declining to decide the merits of a motion to strike extra-record testimony in a brief because the court did not rely on that testimony in its analysis).

reflect[] the history of an individual’s transactions with the particular entity” and do not contain “[o]missions in an individual’s history that place the individual in a false light[.]” *Id.*, subp. 2(B).

To contest the accuracy and completeness of data, an individual subject of the data must notify the responsible authority of the government entity in writing about the “nature of the disagreement.” Minn. Stat. § 13.04, subd. 4(b). Then, within 30 days, the responsible authority must either “correct the data found to be inaccurate or incomplete” or “notify the individual that the responsible authority has determined the data to be correct.” *Id.*, subd. 4(c). An individual who wishes to appeal the responsible authority’s determination may do so “pursuant to the provisions of the Administrative Procedure Act relating to contested cases.” *Id.*, subd. 4(d); *see also* Minn. R. 1205.1600, subp. 1 (2023).

Contested cases may be resolved on summary disposition, which is “the administrative equivalent of summary judgment.” *Pietsch v. Minn. Bd. of Chiropractic Exam’rs*, 683 N.W.2d 303, 306 (Minn. 2004) (citing Minn. R. 1400.5500(K) (2003)). Summary disposition is appropriate only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See* Minn. R. Civ. P. 56.01; *Pietsch*, 683 N.W.2d at 306. This court reviews the grant of summary disposition de novo to determine whether any genuine issues of material fact exist and “whether there was an error in applying the law to the facts.” *See Pietsch*, 683 N.W.2d at 306 (providing summary-judgment standard of review for case resolved on summary disposition).

Here, the contested data are limited to “two statements in [Yang’s] position description referring to her supervisory responsibilities; sections in her 2022 performance

appraisal relating to her supervisory responsibilities; and, the ratings she received in those sections.” We address Yang’s arguments relating to this data before turning to Yang’s additional arguments.

I

Yang argues that there is a genuine issue of material fact about the accuracy and completeness of the specific duty listed in her position description that she will supervise the Assistant Projects Engineer. Yang contends that she was instead assigned to “co-supervise” the Assistant Projects Engineer. MnDOT argues that “[t]he undisputed facts demonstrate that Yang’s work as the Project Engineer involved, among other things, supervising another staff member.” The DOA concurred with MnDOT.

We agree that Yang failed to offer evidence sufficient to raise a fact issue about whether the position description is inaccurate or incomplete. A “supervisor” is defined as “[s]omeone who has authority over others; a manager or overseer.” *Black’s Law Dictionary* 1745 (12th ed., 2024). It is undisputed that Yang had authority to perform “supervisory duties as a co-supervisor,” which include hiring, conducting performance reviews, and providing feedback, coaching, and discipline. Yang disputes that she “accept[ed]” those job duties, but she offers no rebuttal to the fact that she was assigned those duties. The DOA therefore did not err in concluding that there is no genuine issue of material fact that Yang’s position description is accurate and complete.

Yang also argues that there is a genuine issue of material fact relating to the accuracy and completeness of her 2022 performance review because, like the position description, it describes her as a supervisor instead of a co-supervisor. On appeal, she seems to have

abandoned her challenge to two components of the performance review that she raised below to MnDOT and the DOA: the performance rating of “Needs Improvement” related to her failure to fill the Assistant Projects Engineer position, and the statements under the “Character” section of her performance review.⁵ In any event, she does not point to evidence that would create a genuine issue of material fact as to whether her performance review’s description of her as a supervisor is inaccurate. Yang might disagree with her assignment as a co-supervisor, but there is no genuine issue of material fact as to whether that assignment occurred.

II

Having concluded that the DOA did not err in determining that there were no genuine issues of material fact about the position description and performance review, we turn to arguments that were either outside the scope of Yang’s MGDPA challenge or raised for the first time on appeal.

First, we emphasize that the DOA had a narrow task: to determine whether the specific data that had been reviewed by the MnDOT responsible authority were accurate and complete. *See* Minn. Stat. § 13.04, subd. 4 (2024). The data that Yang submitted to the responsible authority are her performance review and position description. Other issues—

⁵ MnDOT addresses the accuracy of the “Needs Improvement” rating contained within Yang’s performance review. We do not fully address that issue because it was not briefed by Yang. *See State, Dep’t of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to reach issue that was inadequately briefed). But we note, as MnDOT points out, that Yang does not identify any facts that would render the subjective determination of “Needs Improvement” inaccurate, and “mere dissatisfaction with a subjective judgment or opinion cannot support a challenge under the Data Practices Act.” *Schwanke v. Minn. Dep’t. of Admin.*, 851 N.W.2d 591, 595 (Minn. 2014).

including data in SEMA4 and Yang’s rights under the Veterans Preference Act, Minn. Stat. § 197.46—did not concern the data that Yang submitted to the MnDOT responsible authority. The DOA did not err by considering only the issues within the scope of its narrow task.

Second, we decline to review issues raised for the first time in briefing to this court. We generally consider only those issues that were presented and considered by the decision-maker below. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see also State by Beaulieu v. Clausen*, 491 N.W.2d 662, 665 n.2 (Minn. App. 1992) (applying *Thiele* in an appeal from an ALJ’s decision), *rev. denied* (Minn. Dec. 15, 1992). Yang argues that she does not meet the definition of “supervisory employee” under the Public Employee Labor Relations Act, Minn. Stat. § 179A.03, subd. 17 (2024). And MnDOT argues that the position description is not data on “an individual,” and so is not subject to a challenge under Minn. Stat. § 13.04, subd. 4(a). Based on our careful review of the record, we conclude that neither argument was before the DOA. We therefore decline to consider them.

We recognize that Yang objects to what she perceives as a reduction in her responsibilities in violation of her rights as a veteran and in response to her taking medical leave. But the MGDPA challenge concerned only the accuracy and completeness of her position description and performance review. We discern no error in the DOA’s grant of summary disposition because there is no genuine issue of material fact that could affect a determination of whether the challenged data are accurate and complete.

Affirmed.