This opinion is nonprecedential except as provided by Minn.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
A24-1532

In the Matter of the Calculation
of MSRS General Employees Retirement Plan Annuity
for Francisco Henderson.

Filed July 21, 2025
Affirmed
Kirk, Judge*

Minnesota State Retirement System

Katherine L. MacKinnon, Law Office of Katherine L. MacKinnon P.L.L.C., Minneapolis, Minnesota (for relator Francisco Henderson)

Keith Ellison, Attorney General, Frank Langan, Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota State Retirement System)

Considered and decided by Ede, Presiding Judge; Slieter, Judge; and Kirk, Judge.

NONPRECEDENTIAL OPINION

KIRK, Judge

This case arises out of a certiorari appeal of an administrative agency's decision. That agency, the Minnesota State Retirement System (MSRS), determined that a settlement payment made to relator by his employer could not be treated as "salary" for the purpose of determining relator's retirement annuities. Relator argues that that the MSRS Board of Directors (the Board) erred in its interpretation of the settlement agreement to determine

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

that the payment was not "salary," and alternatively, that the Board abused its discretion by rejecting the recommendation of the administrative-law judge (ALJ) that some portion of the settlement payment should be treated as "salary." Because the Board did not commit legal error in a determination supported by substantial evidence and we decline to reach Henderson's alternative argument, we affirm.

FACTS

Relator Francisco Henderson worked as an IT employee for Metropolitan Council (Met Council) for over 30 years. Met Council is a quasi-governmental agency that participates in the MSRS pension plan. Upon retirement, Met Council employees receive retirement annuities based on their average salary, defined in statute as the "average of the highest five successive years of salary upon which the employee has made contributions to the retirement fund by payroll deductions." Minn. Stat. § 352.01, subd. 14 a(a) (2024).

In 2018, Henderson applied for a position with another state agency but withdrew his application after he was told that leaving Met Council would result in the loss of post-retirement health benefits. Shortly after, Henderson was approached by a staff member from the Minnesota Department of Public Safety (DPS) who was interested in recruiting Henderson for a position. Henderson told DPS that while he was interested, he did not want to leave Met Council and lose his post-retirement benefits. Instead, Henderson became a "loaned" employee, signing an Employee Interchange Agreement (EIA) that allowed Henderson to remain a Met Council employee while working at DPS. During the three-year term of the EIA, Henderson was not granted salary increases that he expected to receive.

Just before the EIA was set to expire, Henderson was told by a Met Council administrator that contrary to what Henderson understood, he was not entitled to lifetime post-retirement health benefits. Henderson retained an attorney, and in August 2022, sent a letter to the Met Council describing the legal claims that Henderson intended to pursue, including a violation of the Minnesota Whistleblower Act, gender discrimination in violation of the Minnesota Human Rights Act, and promissory estoppel. Henderson requested a settlement for "wages/benefits, emotional distress, retirement and/or healthcare, in exchange for a release of claims." Met Council pursued mediation and sent Henderson a template settlement agreement in advance. The parties exchanged proposed amendments, eventually signing an agreement with the following language:

> By signing this agreement and not rescinding it, [Henderson] agrees that he will retire from his employment with the [Met] Council. . .
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> . . . .
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> . . . In full settlement of Employee's claims and in order to avoid the uncertainties and cost of further litigation, the [Met] Council will issue the following payments for a lump sum settlement amount of $192,000: (1) an electronic payment in the amount of $160,000 to Henderson reflecting alleged wage loss damages, for which a W-2 Form will be issued with withholding at the lowest allowable federal rate according to the Internal Revenue Service in the [Met] Council's sole discretion; and (2) an electronic payment in the amount of $32,000 to [Henderson's attorney] reflecting attorney's fees and costs for which a Form 1099 will be issued.

Henderson then contacted MSRS to inquire as to how the $160,000 settlement payment would be included in his average salary for the purpose of calculating his monthly retirement annuity. MSRS staff informed him that the $160,000 payment would not constitute salary. Henderson contacted MSRS's executive director (the Director) to ask that she review his request to have the payment characterized as salary. MSRS communicated with Met Council staff who stated that "[Henderson's] settlement agreement required that he would retire from the Metropolitan Council . . . . Our understanding was that the $160,000 payment was intended for future wages he was forgoing by retiring early."

The Director rejected Henderson's request to treat the settlement payment as "salary," stating that it was "inconsistent with prior determinations and public policy" to characterize the payment as salary when the agreement did not specify a time period for which the payment compensated, no retirement contributions were deducted, and MSRS did not characterize lost future wages as salary. Henderson appealed the Director's determination, and the matter was referred for a fact-finding conference in front of an ALJ.

At the conference, his attorney outlined how Henderson had forgone a higher-paying job in reliance on Met Council's promise of post-retirement health benefits. Henderson testified that he believed the settlement payment was for backpay, representing the salary increases he did not receive during the term of the EIA. Met Council's attorney testified otherwise, stating that during mediation, Met Council communicated that they were only interested in settling a claim for promissory estoppel such that any settlement payment would be for reliance damages. Met Council "indicated that [they] very strongly wanted Mr. Henderson to leave employment, and that [they] were willing to pay to get him to leave."

The ALJ concluded that, while Henderson did not provide enough evidence to establish that all of the $160,000 payment qualified as "salary," evidence supported that a smaller portion of the payment did qualify. Specifically, the ALJ concluded that Henderson's salary "should have been raised by four percent annually" during the EIA, resulting in $19,723.24 of lost wages constituting salary. This recommendation was submitted to the Board.

The Board generally adopted the findings, conclusions, and analysis of the ALJ, but rejected its recommendation. The Board found that the settlement agreement was ambiguous as to whether the $160,000 payment represented past lost wages consistent with the statutory definition of salary. It further concluded that, because any salary increases were based on assumptions surrounding Henderson's performance and other factors not in the record, the ALJ's characterization of the $19,723.24 as lost wages was speculative. The Board denied Henderson's request to treat the $160,000 payment as "salary." Henderson appeals.

DECISION

I. The Board's interpretation of the settlement agreement does not reflect an error of law and is supported by substantial evidence.

Henderson argues that that Board's interpretation of the settlement agreement is erroneous for two reasons: (1) the agreement's terms are unambiguous and the Board erred by determining otherwise, and (2) even if the terms are ambiguous, there is not substantial evidence in the record to support the Board's interpretation of the phrase "wage loss damages." We disagree.

Decisions by the Board are decisions by an administrative agency. *In re Ret. Benefits of Yetka,* 554 N.W.2d 85, 88 (Minn. App. 1996). We will not reverse an agency's decision unless it was arbitrary, unreasonable, made under an erroneous theory of law, or made without any evidence to support it. *See Anderson v. Comm'r of Health*, 811 N.W.2d 162, 165 (Minn. App. 2012), *rev. denied* (Minn. Apr. 17, 2012). Upon review, "we will not retry facts or make credibility determinations" and will affirm the agency's decision so long as the agency provided a "legal and substantial basis for the action taken." *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 303 (Minn. App. 2007) (quotation omitted).[1] The relator bears the burden of demonstrating any basis for reversal. *Hazelton v. Comm'r of Dep't of Human Servs.*, 612 N.W.2d 468, 471 (Minn. App. 2000).

Minn. Stat. § 352.01, subd. 13 (2022)[2] provides guidance to determine whether payments to an employee are salary for the purposes of calculating one's retirement annuities. There, "salary" is defined as "wages, or other periodic compensation, paid to an employee before deductions for deferred compensation, supplemental retirement plans, or other voluntary salary reduction programs." Minn. Stat. § 352.01, subd. 13(a). The

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[1] The parties disagree as to whether the Board's decision must be reviewed under the Minnesota Administrative Procedure Act (MAPA) or under the common-law certiorari standard, but because the MAPA "scope of review is similar to the common law scope of review on certiorari . . . the same standard applies regardless of the applicability of [MAPA]." *Staeheli*, 732 N.W.2d at 304 n.1. Here, under either MAPA or the common-law certiorari standard, we review whether the agency based its decision on an erroneous theory or law or whether its factual findings are unsupported by substantial evidence.

[2] Because the statute was amended in 2024 in a way that would affect the outcome of this case, *see* 2024 Minn. Laws ch. 102, art. 5 § 1, at 944-45, we cite to the 2022 version of the statute which was in effect during the relevant events in this case.

legislature also provided examples of what salary is not, including: "lump-sum sick leave payments," "severance payments," and "lump-sum annual leave payments and overtime payments made at the time of separation from state service." *Id.*, subd. 13(b)(1)-(3). The final portion of this subdivision provides that payments from settlement agreements are only salary if the Director finds that the payment is consistent with the definition provided in subdivision 13(a) and prior determinations. *Id.*, subd. 13(c). If the Director determines otherwise, an employee may appeal that determination through a timely petition to the MSRS governing board. Minn Stat. § 356.96, subd. 5. (2024).[3] The Director must then either schedule a hearing before the Board or defer this hearing until after a fact-finding conference conducted by an ALJ. *Id.*, subds. 7(a)-(b). Finally, the Board's decision may be appealed to this court. *Id.*, subd. 13.

Neither party contends that any portion of Minn. Stat. § 352.01, subd. 13 is ambiguous, and Henderson does not argue that the Board erred in interpreting the statute. Instead, Henderson argues that the Board made a legal error in concluding that the settlement agreement was ambiguous, and that even if the phrase "alleged wage loss damages" is ambiguous, there is not substantial evidence to support the Board's interpretation of that term. We are not persuaded.

A. The settlement agreement is ambiguous as a matter of law.

"A settlement agreement is a contract," and whether a contract term is ambiguous is a question of law that appellate courts review de novo. *Dykes v. Sukup Mfg. Co.*, 781

[3] We cite to the current version of the statute because it has not been substantively amended since the events relevant to this case.

N.W.2d 578, 581-82 (Minn. 2010). "A contract is ambiguous if, based upon its language alone, it is reasonably susceptible of more than one interpretation." *Art Goebel, Inc. v. N. Suburban Agencies*, 567 N.W.2d 511, 515 (Minn. 1997). When determining whether a contract is ambiguous, we will not isolate the term in question but construe the contract as a whole. *Id.*

Henderson argues that the phrase "wage loss damages" unambiguously categorizes the settlement payment as the equivalent of "salary" under the governing statute such that the Board erred as a matter of law in concluding the agreement was ambiguous. However, his argument is unpersuasive for the following reasons.

First, the phrase "wage loss damages" is modified by the word "alleged." At oral argument, Henderson argued that the inclusion of "alleged" reflects standard practice and has no significance on the interpretation of the agreement. We disagree. Its inclusion means that the agreement did not definitively state that Henderson was entitled to any wage losses at all, much less the kind that Henderson asserts unambiguously qualify as past wages. The settlement agreement further establishes that Henderson initially pursued many claims against Met Council, and that by accepting $160,000, Henderson would forgo all claims against Met Council. When read in conjunction with the word "alleged," this language supports a reasonable interpretation that the settlement payment encapsulated compensation beyond what could be categorized as "salary."

Next, the governing statute defines salary as the equivalent of "periodic compensation." Minn. Stat. § 352.01, subd. 13(a). However, the settlement agreement does not specify a time period for which the lump-sum payment is meant to compensate.

While Henderson asserts that it was "understood to be the 3-year period of the EIA," this is not indicated anywhere in the agreement. In determining whether a contract is ambiguous, we may only look to the language of the contract alone. *Goebel*, 567 N.W.2d at 515. That Henderson points to extrinsic evidence to support his interpretation further undercuts his assertion that the phrase "alleged wage loss damages" is unambiguous.

Next, the "alleged wage loss damages" were conditioned on Henderson's retirement from Met Council and did not expressly contemplate any retirement contributions. Severance payments and annual leave payments paid upon separation of state service are explicitly excluded from the statutory definition of "salary." Minn. Stat. § 352.01 subd. 13(b)(1)-(3). Meanwhile, payments that contemplate contributions to voluntary retirement plans are described in the statutory definition of "salary." *Id.*, subd. 13 (a). Thus, while the term "severance" is not included in the agreement, the language of the agreement providing for a lump-sum payment not subject to retirement contributions that Henderson could access only if he retired supports a reasonable interpretation that the payment is inconsistent with the definition provided by Minn. Stat. § 352.01, subd. 13 (a).

Finally, the phrase "alleged wage loss damages" could reasonably refer to front pay—lost future wages—rather than backpay, as evidenced by its contingency on Henderson's retirement. Henderson argues that it is not reasonable to interpret "alleged wage loss damages" as front pay because the phrase "front pay" does not appear in the agreement. But neither does the phrase "backpay" or any other language unambiguously indicating that the payment was intended for past wage losses.

Still, Henderson argues that "wage loss damages" is plainly understood to mean past wage loss damages. He points us to various employment-law cases that utilize the phrase "wage loss damages" when referring to backpay. We are not persuaded. None of those cases hold that the inclusion of "wage loss damages" in a settlement agreement unambiguously characterizes the payment as consistent with the definition of salary under Minn. Stat. § 352.01, subd. 13.

Henderson also asserts that, because the agreement dictated the issuance of a W-2 for the payment, it unambiguously constitutes past wages. In support of this argument, Henderson relies on *Peterson v. Northeast Bank-Minneapolis* for the premise that when interpreting settlement agreements, this court considers how damages are reported for tax purposes to determine what the damages represent. 805 N.W.2d 878, 882 (Minn. App. 2011). However, because the *Peterson* court was not asked to contemplate whether a settlement payment qualified as "salary" under Minn. Stat. § 352.01, subd. 13, its holding is inapposite here. Moreover, this court inferred that being subject to a W-2 made unspecified damages more likely to be wages, but only in comparison to the appellant's argument that the payment actually constituted damages for emotional distress, which would be reported on a 1099. *Id*. Here, MSRS contends that the payment could reasonably be interpreted as future wages that Henderson was forgoing by retiring early, which would also be reported on a W-2. For these reasons, the issuance of a W-2 does not unambiguously provide that the payment is for past wages.

When viewed as a whole, the agreement lacks language supporting Henderson's assertion that the phrase "alleged wage loss damages" unambiguously meets the statutory definition of "salary" consistent with MSRS's prior determinations. The wage loss damages were "alleged" and there is no indication that Met Council was compensating Henderson for wages connected to a specific period of time. The reference to a W-2 form is not dispositive because front pay would also be subject to a W-2. The settlement payment was conditioned on Henderson's retirement, did not expressly contemplate retirement contributions, and was described as compensation for all claims that Henderson might bring against Met Council. Construed as a whole, the language of the settlement agreement alone does not unambiguously reflect that the $160,000 payment was "salary."

We conclude that the phrase "alleged wage loss damages" in the agreement is ambiguous. Therefore, the Board did not commit a legal error by looking to extrinsic evidence to determine its meaning.

B. There is substantial evidence to support the Board's finding that "alleged wage loss damages" was inconsistent with the statutory definition of salary.

We turn next to whether the Board's interpretation of "alleged wage loss damages" is supported by substantial evidence in the record. While substantial evidence is more than "some" evidence or "any" evidence, we will affirm an agency's decision if the decision is supported by evidence that a "reasonable mind might accept as adequate to support a conclusion." *In re RS Eden/Eden House*, 928 N.W.2d 326, 333 (Minn. 2019) (quotation omitted); *Indep. Sch. Dist. No. 281 v. Minn. Dep't of Educ.*, 743 N.W.2d 315, 327 (Minn. App. 2008) (quotation omitted). The relator must prove that the agency's decision is unsupported by substantial evidence. *Staeheli*, 732 N.W.2d at 310.

Henderson argues that there is substantial evidence in the record supporting his interpretation that the $160,000 payment was for past lost wages and that the Board's interpretation is not "borne out by the credible testimony." However, we defer to the agency's conclusions regarding conflicting testimony and may not reweigh evidence in Henderson's favor. *Id.* at 303. Instead, Henderson must prove that the Board's determination is unsupported by substantial evidence that a reasonable mind would accept as adequate. *See Indep. Sch. Dist. No. 281*, 743 N.W.2d at 327.

To support its determination, the Board relied on testimony, email communications, and the settlement agreement itself. While Henderson and MSRS focus almost exclusively on the Board's determination that the payment could also represent front pay, other evidence in the record supports the Board's determination that the payment was not consistent with the definition laid out in Minn. Stat. § 352.01, subd. 13(a). The lump-sum payment neither specified what time period it was meant to compensate nor contemplated any retirement contributions, highlighting inconsistencies with the statutory definition provided. A Met Council attorney testified that she never would have agreed to a settlement for backpay because Met Council did not believe Henderson had any legitimate legal basis to make a claim for backpay, as evidenced by the discussion during mediation. Email communications establish that Met Council informed MSRS that the settlement payment reflected front pay that Henderson was forgoing by retiring early. Finally, Henderson's own argument in front of the ALJ repeatedly described the higher-paying position he would have enjoyed if not for Met Council's promise—an argument that supports reliance damages, not backpay.

In sum, the record contains ample evidence that the $160,000 payment was not past wages and is thus inconsistent with the statutory definition of "salary." While Henderson argues that his interpretation is *also* supported by substantial evidence, we cannot reweigh evidence in his favor. *Staeheli*, 732 N.W.2d at 303. Because there is evidence in the record that a reasonable mind would accept as adequate to support its conclusion, the Board did not err in determining that the settlement payment was not "salary" under Minn. Stat. § 352.10, subd. 13.

II. We decline to address Henderson's alternative argument.

Henderson argues that, in the alternative, the Board abused its discretion in rejecting the ALJ's recommendation that $19,723.24 be considered salary because that calculation is supported by substantial evidence in the record. We decline to address this argument for two reasons. First, given our conclusion that the Board did not err in determining that none of the $160,000 settlement payment qualified as salary, we need not reach an argument that a lesser portion of the settlement payment was salary. Second, Henderson never argued before the Board that a lesser portion of the settlement payment constituted salary and makes this argument for the first time on appeal. We will not review issues on appeal that were not considered by the agency. *In re Kindt*, 542 N.W.2d 391, 398 (Minn. App. 1996).

Declining to reach Henderson's alternative argument, we affirm the Board's determination that the $160,000 settlement payment was not "salary" consistent with Minn. Stat. § 352.10, subd. 13.

Affirmed.