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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1357**

Michael J. Bui,
Relator,

vs.

Team Personnel Services Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 10, 2008
Affirmed
Muehlberg, Judge***

Department of Employment and Economic Development
File No. 6209 07

Michael J. Bui, 8332 Blaisdell Avenue South, Bloomington, Minnesota 55420 (pro se relator)

Team Personnel Services, Inc., 259A University Avenue West, St. Paul, Minnesota 55103 (respondent)

Lee B. Nelson, Katrina I. Gulstad, Department of Employment and Economic Development, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, Minnesota 55101 (for respondent Department)

Considered and decided by Shumaker, Presiding Judge; Schellhas, Judge; and Muehlberg, Judge.

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

UNPUBLISHED OPINION

MUEHLBERG, Judge

Relator challenges the decision by the unemployment law judge (ULJ) that he was disqualified from receiving unemployment benefits because he was discharged for employment misconduct. Relator argues that reports that he was belligerent and argumentative to others were untrue, and that he was not discharged, but quit because he was not given any more work. Because substantial evidence supports the ULJ's determination that relator was discharged, and the ULJ correctly determined that he was discharged for employment misconduct, we affirm.

FACTS

Relator Michael Bui challenges the decision of the ULJ affirming the determination that he was disqualified from receiving unemployment benefits because he was discharged from Team Personnel, Inc., a temporary staffing agency, for employment misconduct after using profanity and arguing with supervisors on three assignments and with Team Personnel staff.

Bui worked at an assignment at Phoenix Fixtures from September 1 to September 5, 2006. On September 5, the owner of Team Personnel removed Bui from that assignment after receiving a call from a supervisor, who stated that Bui had engaged in rude and inappropriate behavior and was "not wanted back."

After that assignment, Bui called Team Personnel persistently and repeatedly to request additional work, but was not offered further assignments. In March 2007, he established a unemployment-benefits account with the Department of Employment and

Economic Development (DEED). A department adjudicator denied Bui benefits on the ground that he was discharged for employment misconduct because he was rude and abusive toward Team Personnel staff, which violated the standards of behavior an employer has the right to expect and clearly displayed a lack of concern for the employment.

Bui appealed the determination. At a hearing before a ULJ, the owner of Team Personnel testified that he had received reports of Bui's inappropriate behavior at Phoenix Fixtures and two previous work assignments. The owner testified that Bui had worked for a packaging company from August 3 to August 22, 2006, but did not complete the assignment because he was "not requested back for arguing with other employees." Bui also worked as a production assistant from March 4 to March 13, 2005, but that assignment also ended early on a report that he argued with supervisors. The Team Personnel owner also testified that from October 2006 to April 2007, Bui repeatedly called the Team Personnel office and "was extremely rude and abusive" to staff. The owner made the determination that he would "no longer work with Mr. Bui."

Bui testified that he was not told why he could not return to work for Phoenix Fixtures; that he called Team Personnel a number of times and requested more work; and that when he was told there was no more work for him, he quit.

The ULJ asked Bui about a note in the DEED file that Bui had called the DEED office and "used the word f—k a lot." Bui admitted that he used offensive language with DEED staff members because he was "mad and upset" when they discouraged him from

collecting unemployment. He admitted that he was also “mad” at Team Personnel staff, but denied that he used inappropriate language at any work assignment.

The ULJ found that “the preponderance of the evidence supports a conclusion that Bui was discharged from his employment because of employment misconduct.” The ULJ affirmed the determination on reconsideration, and this certiorari appeal follows.

D E C I S I O N

This court examines the decision of the ULJ to determine whether a party’s substantial rights have been prejudiced because the findings, inferences, conclusion, or decision are affected by legal error or unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d) (2006).

Bui first argues that his departure from Team Personnel was a quit, rather than a discharge. Generally, “[w]hether an employee has been discharged or voluntarily quit is a question of fact.” *Midland Elec., Inc. v. Johnson*, 372 N.W.2d 810, 812 (Minn. App. 1985). A quit “occurs when the decision to end the employment was, at the time the employment ended, the employee’s.” Minn. Stat. § 268.095, subd. 2(a) (2006). A discharge occurs “when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity.” *Id.*, subd. 5(a) (2006).

The ULJ found that Bui was discharged on September 5, 2006 because he “was removed from an ongoing assignment at the request of Phoenix Fixtures, Team Personnel’s client, [and] the decision to end Bui’s employment was made by Team Personnel.” Bui argues that he was not discharged, but quit when he realized that the

agency would not offer him further work assignments. But he acknowledges that when he tried to return to work at Phoenix Fixtures, he was told the company did not want him back. Further, the record shows that Team Personnel ended Bui's assignments at two other worksites early because of arguments or abusive language. Thus, substantial evidence in the record supports the ULJ's determination that Bui's separation from employment was a discharge.

Bui also contests the determination that he committed employment misconduct. Whether an employee has engaged in conduct that disqualifies him from receiving unemployment benefits is a mixed question of law and fact. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether the employee committed a particular act is a question of fact. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). But whether the act constitutes employment misconduct is a question of law, which this court reviews de novo. *Id.*

Employment misconduct is any intentional conduct, on the job or off the job, that “displays clearly a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee.” Minn. Stat. § 268.095, subd. 6(a)(1) (2006). Employment misconduct is also negligent or indifferent conduct, on the job or off the job, that demonstrates “a substantial lack of concern for the employment.” *Id.*, subd. 6(a)(2) (2006).

The ULJ found that “three client companies reported Bui's inappropriate behavior as the reason they no longer wanted him at their work sites,” supporting the conclusion that Bui was discharged for that behavior. The ULJ found this evidence to be consistent

with the Team Personnel owner's testimony that Bui made offensive comments to staff. Bui argues that the record lacks evidence of inappropriate comments at the worksites and that the Team Personnel owner "lied." But the ULJ determined the owner's testimony to be credible, and this court defers to the ULJ's credibility determinations. *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). The ULJ correctly determined that Bui was discharged because of employment misconduct.

Bui requests, for the first time on appeal, discovery of tapes and other documentation showing that he argued and used abusive language on the worksites and with Team Personnel staff. But Bui did not ask to subpoena these records before the hearing or request their disclosure. *See* Minn. R. 3310.2914, subp. 1 (2005) (subpoenas are available to compel production of documents); *id.*, subp. 2 (party may demand disclosure of written documents). We also note that Bui was properly provided with an interpreter at the hearing, and the ULJ gave Bui ample opportunity to present evidence supporting his version of events. *See* Minn. R. 3310.2911 (2005) (stating that an interpreter must be provided at the hearing on a party's request); *see also* Minn. R. 3310.2921 (2005) (stating that the ULJ has the obligation to "assist unrepresented parties in the presentation of evidence" and "ensure that relevant facts are clearly and fully developed").

Affirmed.