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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1588**

Tora Glass,
Relator,

vs.

Lowe's Home Centers Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 22, 2010
Affirmed
Kalitowski, Judge**

Department of Employment and Economic Development
File No. 22530696-3

Tora Glass, Goodyear, Arizona (pro se relator)

Lowe's Home Centers Inc., St. Louis, Missouri (respondent)

Lee B. Nelson, Britt K. Lindsay-Waterman, Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent Department of Employment and
Economic Development)

Considered and decided by Kalitowski, Presiding Judge; Wright, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Relator Tora Glass challenges the unemployment-law judge's decision that he is ineligible to receive unemployment benefits because he was discharged for employment misconduct. Relator argues that (1) a written statement by a coworker lacks credibility; (2) reliance on a statement from another store was improper; and (3) it was unfair that only one of the complaining coworkers testified at the hearing. We affirm.

DECISION

In reviewing an unemployment-law judge's (ULJ) eligibility decision, we may affirm or remand the decision, or we may reverse or modify it if the relator's substantial rights have been prejudiced because the ULJ's findings or decision are, among other things, made upon unlawful procedure, affected by error of law, or unsupported by substantial evidence in the record. Minn. Stat. § 268.105, subd. 7(d) (2008). We review the ULJ's factual findings in the light most favorable to the decision, and will not disturb the findings if they are substantially sustained by the evidence. *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). But whether an employee's act constitutes employment misconduct is a question of law that we review de novo. *Id.*

An individual discharged from employment is ineligible for employment benefits from the Minnesota unemployment insurance program if the applicant was discharged because of employment misconduct. Minn. Stat. § 268.095, subd. 4(1) (2008). Employment misconduct is defined as "any intentional, negligent, or indifferent conduct,

on the job or off the job (1) that displays clearly a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee, or (2) that displays clearly a substantial lack of concern for the employment.” *Id.*, subd. 6(a) (2008).

Credibility determinations

The ULJ found by a preponderance of the evidence that relator, a sales specialist at respondent Lowe’s Home Centers Inc. (Lowe’s) in Glendale, Arizona, was discharged for employment misconduct for making sexual comments to three female coworkers that offended them or made them uncomfortable. The ULJ relied on a coworker’s written statement detailing incidents of sexual harassment by relator that occurred over a three-day period. Relator contends that the statement lacks credibility because timecard records submitted into evidence show that the coworker did not work on April 24, 2009, an alleged date of the harassment. But the record indicates that the ULJ considered the timecard records, relator’s testimony, and the coworker’s written statement, and determined that the coworker’s statement was credible. And we defer to the ULJ’s credibility determinations in evaluating conflicting evidence. *See Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006) (“Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.”).

Furthermore, the timecard records do not contradict the coworker’s statement. Although the records show that the coworker did not work on April 24, 2009, the records show that relator, the coworker, and a witness corroborating the coworker’s report worked six of the same days during that week and the following week. Thus, the fact that

the coworker did not work on April 24, 2009, does not contradict the substance or credibility of her statement, but appears to be a mistake in recalling the correct date.

Written statements in lieu of testimony

Relator challenges the ULJ's reliance on two written statements by coworkers complaining of sexual harassment by relator and a statement by a coworker who witnessed an incident of harassment. Specifically, relator argues that the ULJ's reliance on the statements was unfair because the three coworkers did not testify at the evidentiary hearing. We disagree.

A ULJ may "receive any evidence that possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs." Minn. R. 3310.2922 (2009); *see also Jeane Thorne Temporary Service, Inc. v. Elliott*, 351 N.W.2d 393, 395 (Minn. App. 1984) (stating that the ULJ may rely on written documents, reports, and credible hearsay, giving them whatever weight the ULJ deems appropriate).

Here, each of the three statements admitted into evidence was based on personal knowledge and witnessed by Lowe's human resources manager, who testified at the hearing. Moreover, the substance of the written statements was corroborated by the testimony of the human resources manager and of Lowe's general manager. Thus, we conclude that because the statements were credible and probative, the ULJ did not err in receiving them into evidence. *See* Minn. R. 3310.2992.

Relator also contends that it was improper for the ULJ to consider a written statement obtained from the Lowe's store in Minnesota where relator worked before he

transferred to the Arizona location. Relator asserts that the Arizona store did not verify its contents and the Minnesota store did not investigate the coworker's complaints. But it was within the ULJ's discretion to receive the written statement into evidence, and to give it "whatever weight [he] wishes to give [it]." *See Elliott*, 351 N.W.2d at 395. Moreover, the record indicates that the decision to discharge relator was based primarily on the results of the internal investigation and statements by four Arizona employees. And notably, when the Arizona store manager confronted relator with the statement of the Minnesota coworker, relator did not deny the allegations.

Lastly, relator's claim that the complaining individuals were conspiring against him is not supported by the record. As the ULJ noted, there was no evidence that the individuals had any reason to conspire against relator. And the human resources manager testified that the individuals approached her separately and without knowledge of the other complaints, with the exception of the witness, whose statement was elicited during the investigation.

We conclude that the ULJ's findings that relator sexually harassed the three employees are substantially supported by the record, and that the ULJ did not err in relying on the written statements. And the ULJ properly determined that relator was discharged due to employment misconduct because relator's conduct showed a serious violation of the standards of behavior an employer has the right to reasonably expect. *See* Minn. Stat. § 268.095, subd. 6(a) (defining employment misconduct).

Affirmed.