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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0017**

Anthony L. Coleman,
Relator,

vs.

County of Hennepin,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed October 7, 2013
Affirmed
Ross, Judge**

Department of Employment and Economic Development
File No. 30265518-3

Anthony L. Coleman, Minneapolis, Minnesota (pro se relator)

Daniel David Kaczor, Assistant County Attorney, Minneapolis, Minnesota (for
respondent Hennepin County)

Lee B. Nelson, St. Paul, Minnesota (for respondent department)

Considered and decided by Hudson, Presiding Judge; Ross, Judge; and Schellhas,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Food-service worker Anthony Coleman received permission from his supervisor at the Hennepin County Adult Corrections Facility to leave work early after he reported that his mother was ill. When he missed four days' work and his supervisor learned that his real reason for leaving early was to avoid police who were seeking to arrest him for rape, the facility discharged him. Coleman appeals from an unemployment law judge's determination that he is ineligible to receive unemployment benefits because he was discharged from his position for employment misconduct. He asserts that he adequately notified his employer of his absences and that he did not receive a fair hearing. Because the unemployment law judge's findings of misconduct are supported by substantial evidence and because Coleman received a fair hearing, we affirm.

FACTS

Anthony Coleman was a food-service worker at the Hennepin County Adult Corrections Facility in Plymouth from 1993 until his discharge in September 2012. Coleman was at work on September 12, 2012, when he received a telephone call from his mother. The police had just been at her home and asked for Coleman. Coleman told his supervisor that he had to leave work because his mother was ill. The supervisor permitted Coleman to leave.

Police arrested Coleman later that day for allegations of rape. He spent the next two days in jail. Coleman's mother informed his supervisors that he would be absent from work, but she did not give the reason. Coleman was released from jail on

September 14. He called a supervisor and discussed his arrest and claimed that he was sick because he had not taken his prescribed medication while in jail. Coleman then called in sick for his next scheduled shifts on September 17 and 18. When he returned to work on September 19, Coleman received a letter stating that he was being discharged because he was absent without leave for three consecutive days.

Coleman applied for unemployment benefits, but the department of employment and economic development determined that Coleman was ineligible because he had been discharged for employment misconduct. Coleman appealed this determination to an unemployment law judge (ULJ). The ULJ conducted a hearing and determined that the county presented a more credible account than Coleman about the absences. She found that Coleman was discharged for being absent from work because he was incarcerated and because he was not honest about his reason for leaving work. The ULJ also found that his dishonesty and absences demonstrated a substantial lack of concern for his employment. Coleman requested reconsideration and the ULJ affirmed her previous ruling. This appeal on a writ of certiorari follows.

D E C I S I O N

Coleman challenges the ULJ's determination that he was discharged for employment misconduct, a determination that rendered him ineligible for unemployment benefits. *See* Minn. Stat. § 268.095, subd. 4(1) (2012). On appeal we may modify, reverse, or remand a ULJ's unemployment-benefits determination if it is "(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law;

(5) unsupported by substantial evidence in view of the entire record as submitted; or
(6) arbitrary or capricious.” Minn. Stat. § 268.105, subd. 7(d) (2012).

Employment misconduct includes any intentional, negligent, or indifferent conduct that displays either “a serious violation of the standards of behavior the employer has the right to reasonably expect” or “a substantial lack of concern for the employment.” Minn. Stat. § 268.095, subd. 6 (2012). Whether an employee engaged in employment misconduct is a mixed question of fact and law. *Stagg v. Vintage Place, Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). Whether an employee committed the act is an issue of fact, but whether the facts constitute misconduct is a question of law that we review de novo. *Cunningham v. Wal-Mart Assocs., Inc.*, 809 N.W.2d 231, 235 (Minn. App. 2011). We review the ULJ’s findings of fact in the light most favorable to the decision and defer to the ULJ’s credibility determinations. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

The department contends that Coleman’s dishonest representation of his mother’s illness to support his request to leave work is misconduct. Leaving work in the middle of a shift without permission constitutes misconduct. *Psihos v. R & M Mfg.*, 352 N.W.2d 849, 850 (Minn. App. 1984). An employee’s dishonesty to his employer also constitutes misconduct. *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305, 307–08 (Minn. App. 1994). Coleman claims that he did his best to inform his employer that he would not be able to make his shifts. He emphasizes that he or his mother called in before each of his four absences even though he did not have immediate access to a telephone after his arrest. The department concedes that being arrested, standing alone, is not misconduct. But the

ULJ also found that Coleman's story that his mother told him to come home due to her illness was dishonest. She therefore found that Coleman deceived his supervisor with a false reason for leaving work after learning that the police were looking for him. We defer to this credibility determination. Coleman also missed the next two workdays after his arrest without providing his employer any reason. Because Coleman lied about his initial absence and never gave notice or received informed approval for the two subsequent absences based on the true reason for them, the ULJ properly held that his conduct constitutes employment misconduct.

Coleman also argues that he did not receive a fair hearing because the ULJ did not allow his mother to testify. The unemployment law judge must "exercise control over the hearing procedure in a manner that protects the parties' rights to a fair hearing." Minn. R. 3310.2921. The judge must gather all relevant facts, Minn. Stat. § 268.105, subd. 1(b) (2012), but may exclude irrelevant or repetitious evidence. Minn. R. 3310.2922. We reverse or modify a ULJ's decision only "if the substantial rights of the [relator] may have been prejudiced." Minn. Stat. § 268.105, subd. 7(d).

Coleman's mother did not testify over the phone at the hearing although she was available for that purpose. This was not the ULJ's fault; Coleman had opportunities to request her testimony but failed to do so. The ULJ was notified of the mother's presence and her intention to be a witness at the beginning of the hearing and the ULJ responded by stating, "If I decide that I need information from her . . . [and] if she is there I'll ask to talk with her later But I have a feeling that I'll be able to get the information that I need from you." At the end of the hearing the ULJ twice asked Coleman if he had

anything else to add. Coleman declined both times and did not request to add his mother's testimony. And on appeal, he has not stated what, if any, facts his mother would have testified to that were not already presented during the hearing. It would have avoided any cause for concern had the ULJ affirmatively invited Coleman's mother's testimony after indicating she might be asked to testify. But given Coleman's failure to request that she testify and given his failure to attempt any showing or argue that she had new or different evidence to offer, we have no basis on which to conclude that the ULJ's failure to independently elicit testimony from Coleman's mother prejudiced him or otherwise resulted in an unfair hearing.

Affirmed.