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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0572**

Scott Bachtle,
Relator,

vs.

Dave Syverson, Inc. - Dave Syverson Ford Lincoln Mercury,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed October 15, 2012
Affirmed
Halbrooks, Judge**

Department of Employment and Economic Development
File No. 28858142-3

Scott Bachtle, Albert Lea, Minnesota (pro se relator)

Dave Syverson, Inc., Albert Lea, Minnesota (respondent)

Lee B. Nelson, Minnesota Department of Employment and Economic Development,
St. Paul, Minnesota (for respondent Department of Employment and Economic
Development)

Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and
Halbrooks, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that he is ineligible to receive unemployment benefits due to termination for employment misconduct. We affirm.

FACTS

Relator Scott Bachtle worked as an automobile mechanic for respondent Dave Syverson Ford Lincoln Mercury (Syverson) from April 2007 to November 16, 2011, when he was terminated for gross insubordination. The parties dispute the events leading to the termination.

Bachtle's supervisor, Steve Fairchild, and Syverson parts and services director, Tim Mann, allege Bachtle had a habit of using profanity at work and that this was disruptive to other employees. To address the situation, they met with Bachtle in March 2011 to warn him about using profanity on the job. Bachtle disputes being given any such warning at this meeting.

On November 16, 2011, the day that Bachtle was terminated, he and Mann had an altercation in the repair shop concerning the workshop hoists, some of which, including Bachtle's, were being repaired that morning. Bachtle was upset that one hoist in particular was not being repaired, and he confronted Mann about it, accusing Syverson of doing things "half assed." According to Mann, Bachtle asked, "[W]hy ain't you fixin' the f---in' hoist[?]" When Mann explained that the hoist would not be repaired, Mann contends that Bachtle replied that he had "better f---in' fix the hoist right now" or that

Bachtle would call the Occupational Safety & Health Administration (OSHA). According to Mann, the workshop had one hoist that was outside of OSHA specifications, but the shop was equipped with eight hoists for the three mechanics it employed at that time.

Bachtle challenged Mann again about repairing the hoist, and Mann repeated that the hoist would not be repaired. Mann alleges that Bachtle then replied, “[J]ust get the f--k out of here.” Fairchild overheard the altercation from his office. Fairchild corroborates Mann’s account of the oral exchange. Bachtle was terminated that morning for gross insubordination. Although Bachtle admits accusing Syverson of doing things “half assed,” he denies using any other profanity that day prior to termination.

Following his termination, Bachtle applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development deemed Bachtle eligible for benefits. Syverson appealed. Following a hearing, the ULJ determined that Bachtle was discharged for employment misconduct and is therefore ineligible for unemployment benefits. The ULJ further noted that Bachtle received an overpayment of \$1,256 in unemployment benefits, subject to collection by the state unemployment-insurance program. The ULJ affirmed his decision on reconsideration. This certiorari appeal follows.

DECISION

This court reviews a ULJ’s decision to determine whether a party’s substantial rights were prejudiced because the findings, inferences, conclusion, or decision are

unsupported by substantial evidence in view of the record as a whole or affected by an error of law. Minn. Stat. § 268.105, subd. 7(d) (2010).

A person discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). Whether an employee engaged in employment misconduct presents a mixed question of law and fact. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether an employee committed a particular act is a question of fact. *Id.* Yet whether that act constitutes employment misconduct is a question of law, which this court reviews de novo. *Stagg v. Vintage Place*, 796 N.W.2d 312, 315 (Minn. 2011).

A. Factual findings

Bachtle argues the ULJ relied on witness testimony that was not credible. We review the ULJ's factual findings in the light most favorable to the decision, *Stagg*, 796 N.W.2d at 315, and "will not disturb those findings if the evidence substantially sustains them," *Vassei v. Schmitt & Sons Sch. Buses Inc.*, 793 N.W.2d 747, 749 (Minn. App. 2010). We defer to the ULJ's credibility determinations. *Skarhus*, 721 N.W.2d at 344. Yet when the credibility of an involved party has a significant effect on the outcome of a decision, the ULJ must "set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1(c) (2010).

The ULJ found that Bachtle had "at times exhibited a poor attitude" and used profanity at work. The ULJ further found that Bachtle had been reprimanded for this conduct in March 2011, and that on November 16, Bachtle was insubordinate and again used profanity. In making these findings, the ULJ credited the testimony of Mann and

Fairchild, as he was entitled to do. The ULJ deemed the employer's witnesses more credible than Bachtle because, as he explained, "The employer presents a plausible and logical chain of events leading to the termination. The employer[']s witnesses corroborate each other[']s testimony."

Bachtle's argument that the ULJ erred in relying on the testimony of the employer's witnesses over his own testimony is simply unpersuasive. Because the ULJ set out his reason for crediting the employer's witnesses, we will not disturb those credibility determinations. Furthermore, substantial evidence in the record supports the ULJ's findings that Bachtle had used profanity at work on more than one occasion and had been reprimanded for that conduct.

B. Misconduct determination

We next address whether Bachtle's conduct rose to the level of misconduct. This is a question of law, which we review *de novo*. *Stagg*, 796 N.W.2d at 315. Employment misconduct is "any intentional, negligent, or indifferent conduct, on the job or off the job that displays clearly: (1) a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee; or (2) a substantial lack of concern for the employment." Minn. Stat. § 268.095, subd. 6(a) (2010). Whether employee conduct amounts to a serious violation of the standards of behavior the employer has the right to reasonably expect of employees is an objective determination that turns on whether "the employer's expectation was reasonable under the circumstances." *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 290 (Minn. 2006).

Bachtle argues that he did not commit misconduct because he never received a written warning before termination. But prior warning is not a requirement for a finding of employment misconduct. *Auger v. Gillette Co.*, 303 N.W.2d 255, 257 (Minn. 1981). Moreover, the record reveals that Bachtle's employer did warn him in March 2011 about using profanity on the job. Refusing to follow an employer's reasonable policies and requests constitutes employment misconduct. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002); *Bray v. Dogs & Cats Ltd.*, 679 N.W.2d 182, 184 (Minn. App. 2004). We ascertain nothing unreasonable about Syverson's instruction that Bachtle refrain from using profane language at work. We also agree with the ULJ that Syverson had the right to expect that employees remain professional and respectful while working. Thus, Bachtle's disregard of his employer's request as to workplace decorum constituted a serious violation of the standards of behavior that Syverson had a right to expect. As such, Bachtle's conduct constituted employment misconduct.

Bachtle argues, however, that his conduct was not misconduct because he was concerned about safety in challenging Mann about the hoist. But Bachtle failed to offer testimony before the ULJ as to what his safety concerns were. The record indicates that one hoist was out of compliance with safety regulations but that other hoists were available for use.

Finally, Bachtle contends that he was terminated for a single incident. Although not dispositive, whether an employee is discharged for conduct involving only a single incident is "an important fact that must be considered in deciding whether the conduct rises to the level of employment misconduct under [the law]." Minn.

Stat. § 268.095, subd. 6(d) (2010). But the ULJ found that Bachtle's use of profanity at work was not an isolated incident and that finding is supported by substantial evidence in the record.

Accordingly, the ULJ did not err in determining that Bachtle committed employment misconduct and is therefore ineligible for unemployment benefits.

Affirmed.