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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-1230**

Mohamed Mohamoud,  
Relator,

vs.

Scalzo Hospitality, Inc.,  
Respondent,

Department of Employment and  
Economic Development,  
Respondent.

**Filed March 17, 2014  
Affirmed  
Hudson, Judge**

Department of Employment and  
Economic Development  
File No. 31028400-3

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Considered and decided by Hudson, Presiding Judge; Peterson, Judge; and  
Stauber, Judge.

## UNPUBLISHED OPINION

**HUDSON**, Judge

In this certiorari appeal from a decision by an unemployment-law judge (ULJ) that relator is ineligible for unemployment benefits because he was discharged for employment misconduct, relator argues that the ULJ erred by making inadequate findings regarding the credibility of witnesses. Because the ULJ's credibility findings were sufficient, we affirm.

### FACTS

Relator Mohamed Mohamoud was employed full-time with Scalzo Hospitality, Inc. d/b/a Ramada Plaza Minneapolis. Relator was discharged for violating his employer's policies, including leaving the workplace property during a break without permission and making derogatory remarks about his supervisor to other employees. On one occasion, relator was supposed to be working in the hotel's kitchen, but the chef was unable to locate him for an hour and a half. Relator was given a verbal warning about leaving his work area without permission. A few days later, relator left hotel property during his shift without permission. Shortly after, he called the chef to tell him he had run out of gas on the highway. Relator was suspended from employment pending investigation of the incident, and a meeting was scheduled between relator and Scalzo's director of human resources. Two employees reported that just before the meeting they heard relator make derogatory remarks containing an expletive about the chef. Relator also apparently told the other employees that he wanted to get fired so he could collect unemployment benefits. Relator denied making these comments.

Relator applied for unemployment benefits. The Department of Employment and Economic Development (DEED) issued a determination of ineligibility, finding that relator had been terminated for employment misconduct and was therefore not eligible for benefits. Relator appealed this determination, and a telephone hearing was held before a ULJ. Relator participated in the proceedings with the aid of an interpreter; Scalzo was represented by its director of human resources. One of the hotel employees who reported hearing relator's comments before his meeting with human resources also testified. The ULJ concluded that relator was terminated for employment misconduct and affirmed the decision after relator filed a request for reconsideration. This appeal by writ of certiorari follows.

### **D E C I S I O N**

Relator argues that the ULJ erred by not setting forth sufficient reasons for her credibility determinations as required by statute. This court may reverse or modify a decision of a ULJ “if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusions, or decision are . . . unsupported by substantial evidence in view of the entire record.” Minn. Stat. § 268.105, subd. 7(d)(5) (2012). We give great deference to the ULJ's findings. *McNeilly v. Dept. of Emp't & Econ. Dev.*, 778 N.W.2d 707, 710 (Minn. App. 2010). Generally, “[c]redibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006). “When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out

the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1(c) (2012).

Here, relator’s testimony that he did not make derogatory comments about the hotel chef was in direct conflict with the testimony of the employee who stated he heard relator make the comments. Relator’s testimony that, except for a ten-minute break, he was in the kitchen when the chef claimed he could not find him for an hour and a half also conflicts with the human resources director’s testimony that the kitchen was small enough that it would be easy to quickly tell if relator was present or not. The ULJ found that “[t]he testimony of the employer’s witnesses was more credible than [relator’s] because it was more plausible, whereas [relator’s] testimony was less plausible and more self-serving.” Upon reconsideration, the ULJ added “[relator’s] testimony concerning the events of February 15 was not credible because it offered no explanation as to why [the chef] was unable to find [relator] in the kitchen for an hour and a half.” These findings are supported by substantial evidence in the record of the kitchen’s small size.

Relator argues that the ULJ made credibility determinations without considering any of the factors that this court identified as relevant in *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 532–33 (Minn. App. 2007). But the ULJ’s findings about the plausibility and self-serving nature of relator’s testimony align with relevant factors identified in *Ywswf*, including whether a witness’s testimony was believable based on the facts and whether the witness had a stake in the outcome. *Id.* Further, the factors are not mandatory; they are suggestions which leave the ULJ free to consider any factor he or she considers relevant. *See Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d

23, 29 (Minn. App. 2007) (stating that a ULJ may consider all relevant factors when making credibility determinations). For all of the foregoing reasons, the ULJ's findings satisfy the statutory requirement of "set[ting] out a reason" for credibility determinations.

**Affirmed.**