STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0525

Ishmael B. McReynolds,
Relator,

vs.

Century Tile Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed April 8, 2008
Affirmed
Lansing, Judge

Department of Employment and Economic Development
File No. 498 07

Ishmael B. McReynolds, 852 Tuscarora Avenue, St. Paul, MN 55102-3913 (pro se relator)

Century Tile Inc., 863 Rice Street, St. Paul, MN 55117-5421 (respondent)

Lee B. Nelson, Katrina I. Gulstad, Minnesota Department of Employment and Economic Development, 1st National Bank Building, Suite E200, 332 Minnesota Street, St. Paul, MN 55101-1351 (for respondent Department of Employment and Economic Development)

Considered and decided by Lansing, Presiding Judge; Ross, Judge; and Johnson, Judge.

U N P U B L I S H E D O P I N I O N

LANSING, Judge

Ishmael McReynolds appeals, by writ of certiorari, an unemployment law judge's determination that he was discharged for employment misconduct and is therefore disqualified from receiving unemployment benefits. Because substantial evidence supports the determination that McReynolds was discharged for failure to abide by his employer's reasonable directives on use of the company vehicle and limitation of personal errands during work hours, we affirm.

F A C T S

Century Tile Inc. employed Ishmael McReynolds as a forty-hour-a-week delivery driver beginning on November 13, 2006. Less than a month later, on December 5, 2006, Century Tile terminated McReynolds's employment for transporting himself and four other people, three of them children, in the cab of a company truck that had only three seat belts and for using work time for personal errands despite a previous warning.

McReynolds applied for unemployment benefits with the Department of Employment and Economic Development (DEED). Based on a sworn written statement submitted by the owner of Century Tile, a DEED adjudicator concluded that McReynolds was disqualified from benefits because he was discharged for employment misconduct. McReynolds appealed and requested a hearing.

At the hearing, the vice president of Century Tile, Wes Hook, testified that problems developed in the working relationship shortly after McReynolds began employment. The employee responsible for training McReynolds told his supervisors

that McReynolds spent a lot of work time making personal phone calls and had also stopped at a repair shop to look at his car during work hours. Based on this information and their own observations, McReynolds's supervisors called him into a meeting during the week of November 27, 2006, and explained that "personal phone calls and personal errands on company time were not acceptable."

In the week following the meeting, McReynolds approached his trainer and asked him if he could stop on the way to making a delivery, pick up his child, and take the child to school. The trainer told McReynolds that he would need the permission of Century Tile's owner, and McReynolds obtained the owner's permission. When McReynolds and the trainer stopped at McReynolds's home, McReynolds picked up three children. The total number of people in the cab of the truck was five. Hook testified that the truck had seat belts for only three people.

McReynolds testified that he had permission to pick up his children but that he did not specify how many children. Hook testified that the owner understood that McReynolds would be picking up only one child, and Hook's testimony reaffirmed the owner's sworn statement. Hook also testified that they made the final decision to discharge McReynolds later that same day when McReynolds "again took my company vehicle . . . and went to his residence before making [a] delivery for me."

Following the hearing, the unemployment law judge (ULJ) determined that McReynolds was discharged from Century Tile for employment misconduct. McReynolds filed a request for reconsideration, and the ULJ affirmed the disqualification. McReynolds then petitioned for review of the order of affirmation.

D E C I S I O N

A discharge for employment misconduct results in disqualification from unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2006). "Employment misconduct" is intentional, negligent, or indifferent conduct that clearly 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." *Id.*, subd. 6(a) (2006).

We review an unemployment law judge's (ULJ) decision to determine whether substantial rights were prejudiced because the findings, inferences, conclusion, or decision are affected by error of law or unsupported by substantial evidence in view of the entire record. *See* Minn. Stat. § 268.105, subd. 7(d) (2006) (providing bases on which this court may reverse or modify ULJ's decision). The ULJ's factual findings are viewed in the light most favorable to the decision. *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 377 (Minn. 1996) (summarizing review standard for decisions by commissioner's representative); *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 531 (Minn. App. 2007) (applying standard to ULJ decision). But the ultimate determination on disqualification is a question of law, which we review de novo. *Lolling*, 545 N.W.2d at 377.

Minnesota caselaw supports the ULJ's determination that McReynolds's conduct constitutes employment misconduct. "[R]efusing to abide by an employer's reasonable policies and requests amounts to disqualifying misconduct." *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). An employer can "reasonably expect an employee to keep it apprised of his whereabouts," *Winkler v. Park Refuse Serv., Inc.*, 361

N.W.2d 120, 123 (Minn. App. 1985); can "expect an employee to work when scheduled," *Little v. Larson Bus Serv.*, 352 N.W.2d 813, 815 (Minn. App. 1984); and can "expect its employees not to engage in conduct that seriously endangers people's safety," *Shell v. Host Int'l Corp.*, 513 N.W.2d 15, 18 (Minn. App. 1994).

The ULJ found that, despite Century Tile's admonition to McReynolds that he must ask for permission to run personal errands, he abused his employer's permission when he drove three children rather than one child in the company's truck and later that same day used work time for a personal errand without obtaining permission. Additionally, the ULJ found that McReynolds engaged in an unsafe activity when he transported five people in a vehicle that only had three seat belts.

McReynolds contends that he did not act outside his supervisor's permission on using work time for errands, that the trainer lied in his reports to Century Tile supervisors, and that other employees made excessive phone calls and used work time for personal errands. He contends that the ULJ's decision is therefore unsupported by substantial evidence and should be reversed. We address each of the three claims.

First, McReynolds does not deny that he transported himself, his trainer, and three children in the cab of the company truck that had only three seat belts. He testified that when he asked for permission he did not say how many children he would be transporting. This admission is consistent with the signed sworn statement of Century Tile's owner and the testimony of the vice president who indicated that the owner would not have authorized an activity that was "an unsafe practice obviously and illegal." The ULJ found that, at best, McReynolds's testimony is that he did not tell the owner how

many people he would be transporting in the cab. But, nonetheless, it is "just common sense that it would be unsafe to take three children in a truck cab without enough [seat belts]." As a result, substantial evidence supports the ULJ's conclusion that McReynolds acted outside the scope of his employer's permission.

The record also supports the ULJ's findings that McReynolds did not have permission to run a second errand the same day. The owner of Century Tile wrote in his statement that, after the seat belt incident, McReynolds "ran another personal errand on company [time] without my authorization." The owner stated that, combined with the seat belt incident, this was the final occurrence that caused McReynolds's discharge. Additionally, Hook testified that Century Tile made the final decision to discharge McReynolds after he was sent to deliver materials and "again took my company vehicle . . . and went to his residence before making the delivery for me."

Second, McReynolds's challenges to the trainer's credibility were rejected by the ULJ for reasons supported by the record. McReynolds argues that the trainer's report that McReynolds used work time for a second personal errand the same day was not credible. McReynolds contends that the trainer lied so that McReynolds would be discharged and would not take the trainer's driving job. The ULJ rejected this claim because "[t]he evidence supports that [the trainer] had nothing to gain by [McReynolds's] departure as he already knew his driving job would end as he would no longer be insured." Our deference to the ULJ's determination extends to credibility assessments. *See Lolling*, 545 N.W.2d at 377 (deferring to credibility assessment). The ULJ, consistent with the statutory provisions, set forth her reasons for rejecting

McReynolds's challenge to the trainer's credibility. *See* Minn. Stat. § 268.105, subd. 1(c) (2006) (providing that ULJ must set out reason for crediting or discrediting that testimony if credibility of witness has significant effect on outcome of decision).

Third, McReynolds's remaining contention, even if true, would not result in a reversal. He contends that his conduct in making personal phone calls and running errands on work time without permission was not different from the conduct of his trainer or other employees. We note that only McReynolds's allegation is offered in support of this claim. But, even if true, a "[v]iolation of an employer's rules by other employees is not a valid defense to a claim of misconduct." *Dean v. Allied Aviation Fueling Co.*, 381 N.W.2d 80, 83 (Minn. App. 1986). And the ULJ did not find that McReynolds made excessive personal calls or rely on this conduct in reaching her conclusion.

Based on the substantive evidence contained in the entire record, the ULJ was justified in determining that McReynolds was discharged for employment misconduct. McReynolds's conduct in failing to abide by reasonable and safe standards in the use of the company vehicle and failing to follow reasonable directives on the limitation of personal errands during work hours constitutes a violation of standards that Century Tile could reasonably expect from their employees.

Affirmed.