**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A08-0091**

James Artis Armstrong,
Respondent,

vs.

Commissioner of Human Services, et al.,
Appellants.

**Filed January 13, 2009**
**Affirmed**
**Kalitowski, Judge**

Washington County District Court
File No. 82-CX-07-003611

Lindsay W. Davis, Southern Minnesota Regional Legal Services, Inc., 166 East Fourth Street, Suite 200, St. Paul, MN 55101; and

Charles Thomas, Southern Minnesota Regional Legal Services, Inc., 12 Civic Center Plaza, Suite 3000, Mankato, MN 56002-3304 (for respondent)

Doug Johnson, Washington County Attorney, Maura J. Shuttleworth, Assistant County Attorney, 14949 62nd Street North, P.O. Box 6, Stillwater, MN 55082 (for appellant)

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

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

**KALITOWSKI,** Judge

Respondent James Artis Armstrong was disqualified from employment based on an agency determination that a preponderance of the evidence showed that he had committed second-degree assault. Because we conclude that the agency decision is not supported by substantial evidence, we affirm the district court's reversal of the agency decision that disqualified respondent.

## FACTS

Respondent worked as a personal-care attendant for a company licensed by the Department of Human Services (DHS). On April 15, 2004, appellant Washington County Community Services (the county) sent respondent a notice of disqualification. The notice stated that the county had conducted a background check on respondent and found that a preponderance of the evidence showed respondent had committed second-degree assault in 1999.

The incident in question occurred on the evening of August 10, 1999, after respondent drove his girlfriend J.M.S., her nine-year-old son, and their five-year-old daughter to the home of J.M.S.'s uncle. The purpose of their visit was to pick up J.M.S.'s car, which her uncle was repairing. Respondent parked near the uncle's house, and J.M.S. exited respondent's vehicle. She approached her uncle, who was still working on her car. Respondent and the two children remained in his vehicle.

At the time of the incident, J.M.S. was seven or eight months pregnant with respondent's child. Respondent is approximately 5'4" to 5'6" in height and weighed

approximately 135 pounds. J.M.S.'s uncle is approximately 5'10" and weighed 230 to 250 pounds. It is undisputed that J.M.S.'s uncle was high on crack and/or drunk.

When J.M.S. discovered that her uncle had not finished the repairs, she informed him she would not pay until the work was done. They began to argue. J.M.S.'s uncle struck the windshield of her car with his hand, then he walked to the porch of the house and retrieved a large monkey wrench; J.M.S. walked to respondent's car, where her son handed her a hammer. She walked back to her own car holding the hammer and stood between her uncle and her car.

J.M.S.'s uncle grabbed her, shook her, and demanded money from her. J.M.S. and her uncle struggled for control of the hammer. After a few minutes, respondent exited his vehicle and shouted at J.M.S.'s uncle to stop fighting with her. Respondent had an aluminum baseball bat in his hand. Respondent told J.M.S.'s uncle to let her go or he would hit him with the bat. J.M.S.'s uncle then pushed her away and came at respondent. During the ensuing altercation, respondent struck J.M.S.'s uncle at least twice with the bat, and J.M.S. struck her uncle with the hammer.

J.M.S.'s mother and aunt arrived on the scene. Respondent wanted to call the police but the two women disagreed and instead took J.M.S.'s uncle to the hospital where he was treated for multiple skull fractures and a broken arm. He was later placed in a medically induced coma. Respondent and J.M.S. were subsequently questioned and arrested but the Ramsey County attorney did not prosecute them for this incident.

Pursuant to the April 2004 notice of disqualification, respondent was allowed to provide supervised care to vulnerable people while his disqualification was being

reconsidered. For the next two years, respondent continued his employment as a personal-care attendant. On May 9, 2006, appellant commissioner of human services (the commissioner) affirmed respondent's disqualification. Respondent then requested a hearing, which was held in October 2006. The human services judge (HSJ) recommended that the agency decision be affirmed. And in April 2007, the commissioner issued his final decision, accepting the HSJ's recommended findings of fact, conclusions of law, and order.

Respondent appealed the commissioner's decision to the district court. After reviewing the record and hearing oral arguments, the district court issued an order reversing the commissioner's decision. This appeal follows.

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

On appeal from a district court's order regarding an appeal from the commissioner's decision, we independently review the commissioner's decision, giving no deference to the decision of the district court. *Fish v. Comm'r of Minn. Dep't of Human Servs.*, 748 N.W.2d 360, 363 (Minn. App. 2008). The scope of our review is governed by Minn. Stat. § 14.69 (2008). *Zahler v. Minn. Dep't of Human Servs.*, 624 N.W.2d 297, 301 (Minn. App. 2001), *review denied* (Minn. June 19, 2001). We may reverse the commissioner's decision if the substantial rights of the petitioners have been prejudiced because the administrative finding, inferences, conclusion, or decisions are, among other defects, "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 14.69(e) (2008); *see also Fish*, 748 N.W.2d at 363 (applying

section 14.69). It is respondent's burden to prove that the commissioner's decision is unsupported by substantial evidence. *Fish*, 748 N.W.2d at 363.

Here, the HSJ concluded that a preponderance of the evidence showed that respondent had committed second-degree assault. The parties do not dispute that the underlying elements of second-degree assault were met. Rather, respondent contends that his actions were privileged by self-defense or defense of others.

The HSJ concluded that respondent failed to prove that he acted in self-defense or in defense of another during the August 10, 1999 incident. The HSJ supported this conclusion with the following two findings of fact:

> 21. The testimony of [respondent] and [J.M.S.] alleging self-defense contradict[s] their earlier statements, including statements made to the police at the time of the incident and the witnesses' affidavits.
>
> 22. A full review of the record, affidavits, and police report indicates that the self-defense claim contradicts the medical evidence. The testimony of [respondent] and [J.M.S.] is inconsistent with the nature and extent of the victim's injuries.

Minnesota's self-defense statute provides that "reasonable force may be used upon or toward the person of another without the other's consent when . . . used by any person in resisting or aiding another to resist an offense against the person." Minn. Stat. § 609.06, subd. 1 (2008).

> The elements of self-defense are (1) the absence of aggression or provocation on the part of the defendant; (2) the defendant's actual and honest belief that he or she was in imminent danger of death or great bodily harm; (3) the existence of reasonable grounds for that belief; and (4) the

> absence of a reasonable possibility of retreat to avoid the danger.

*State v. Basting*, 572 N.W.2d 281, 285 (Minn. 1997).

We review an agency's factual findings under the substantial-evidence test. *Dep't of Human Servs. of Minn. v. Muriel Humphrey Residences*, 436 N.W.2d 110, 114 (Minn. App. 1989), *review denied* (Minn. Apr. 26, 1999). If an agency ruling is supported by substantial evidence in view of the entire record submitted, it must be affirmed. *White v. Minn. Dep't of Natural Res.*, 567 N.W.2d 724, 730 (Minn. App. 1997). Substantial evidence is defined as: (1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety. *Id.* We will affirm if the commissioner engaged in "reasoned decisionmaking," even if we would have reached a different conclusion. *Id.* We also defer to an agency's conclusions regarding conflicts in testimony and the inferences to be drawn from testimony. *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001). But "[a]n agency's decision is not supported by substantial evidence if there is a combination of danger signals which suggest the agency has not taken a hard look at the salient problems and the decision lacks articulated standards and reflective findings." *In re Claim for Benefits by Meuleners*, 725 N.W.2d 121, 123 (Minn. App. 2006) (quotations omitted).

We conclude, as did the district court, that the presence of several danger signals indicates that the commissioner erred in accepting the HSJ's findings and conclusion.

Specifically, the HSJ relied on evidence that is inconsistent with her own factual findings, and failed to explain these inconsistencies. The HSJ did not discuss the self-defense statute, the elements of self-defense, or the reasonableness of respondent's actions. The HSJ did not address the reliability of the 1999 police report. Nor did the HSJ mention that respondent, who was not prosecuted for the 1999 incident, did not have a contemporaneous opportunity to challenge the information in the police report.

We note that this case may be unusual in that it arises in the context of a DHS disqualification proceeding, but the HSJ was required to apply concepts of criminal law. And although our review gives no deference to the district court's order, we note that the district court's reasoned evaluation of the police report reflects its experience with the criminal justice system:

> 14. The [district court] has taken into consideration the police report and realizes that the police report does not match perfectly with the testimony of [respondent] and [J.M.S.]. However, neither [respondent] nor [J.M.S.] were charged with a crime or prosecuted; and [J.M.S.] testified that the Officer changed words and left out clearly explained items and that he was casual about the interview with her telling her "Oh don't worry you're fine" and "you guys are fine." This implies to the [district court] that the investigation in this matter was viewed [as] self-defense from the beginning and may have been more relaxed and informal than it should have been, whereby creating inconsistencies.

We conclude that the HSJ's finding that "[t]he testimony of [respondent] and [J.M.S.] alleging self-defense contradict[s] their earlier statements," is not supported by substantial evidence in view of the entire record submitted. The HSJ's findings and conclusions do not specify how respondent and J.M.S.'s hearing testimony contradicts

their earlier statements. But our review of the record shows that there are inconsistencies between what respondent and J.M.S. told police in 1999, the contents of their 2006 affidavits, and their testimony at the 2006 agency hearing. For example, in 1999, respondent claimed to have struck J.M.S.'s uncle once; at the hearing, respondent testified that he hit J.M.S.'s uncle with the bat at least two times. In 1999, J.M.S. denied striking her uncle with the hammer; in 2006, she stated that she did strike him.

But such inconsistencies must be viewed in light of the entire record. It is undisputed that respondent was attacked when he intervened in a physical confrontation between a then-pregnant J.M.S. and her uncle. Respondent and J.M.S. have consistently stated that J.M.S.'s uncle, despite being struck, did not stop attacking respondent. They have consistently stated that no one struck J.M.S.'s uncle after he had been disabled or had fallen to the ground. Furthermore, respondent and J.M.S. have consistently stated that they wanted to call police after the incident but were told not to by J.M.S.'s family members. Seeking to inform law enforcement of a violent incident is behavior consistent with self-defense or defense of others.

Moreover, the HSJ's findings support the testimony of respondent and J.M.S.: that J.M.S. was pregnant; that her uncle was approximately 230 pounds and 5'9" or 5'10" in height and respondent weighed approximately 135 pounds and was 5'5" or 5'6" in height; that respondent believed J.M.S.'s uncle was either high on drugs or coming down off a crack high; that respondent was sober and of sound mind; that J.M.S. was being pushed by her uncle and was screaming and crying; that J.M.S. kicked at her uncle in an attempt to escape; that because respondent did not want to leave J.M.S. alone with her

uncle he exited his car to help J.M.S.; that respondent was attacked when he told J.M.S.'s uncle to stop hurting her; and that respondent and J.M.S. wanted to call the police after the incident. We therefore conclude that the HSJ's finding that respondent and J.M.S. have been inconsistent in their testimony regarding self-defense is not supported by substantial evidence.

We also conclude that the HSJ's finding that respondent's self-defense claim is inconsistent with the medical evidence is not supported by substantial evidence in view of the entire record submitted. The record does not contain medical records or expert medical testimony; instead, the 1999 police report indicates that "medical staff" at the hospital told the officer that J.M.S.'s uncle had sustained multiple skull fractures and an arm fracture. The HSJ's findings and conclusions do not explain how these injuries are inconsistent with the scenario of J.M.S.'s uncle being struck several times while continuing to charge at respondent. Rather, the HSJ's finding is based on the testimony of appellants' witness Richard D. Hodson:

> 4. [Hodson] stated that in evaluating whether [respondent] was privileged to claim self-defense, he read the police report, which described the extent of the victim's injuries, and he considered the duty to retreat. [Hodson] did not believe that [respondent] acted in self-defense or defense of others because . . . [respondent] and [J.M.S.] could have left the situation in their car and the victim's injuries appeared inconsistent with self-defense injuries.

Hodson is an assistant county attorney who reviewed the 1999 police report, respondent's Bureau of Criminal Apprehension record, and respondent's Department of Public Safety record.

While Hodson's memorandum and his hearing testimony support the HSJ's factual finding, we conclude that the record as a whole does not support a finding that the injuries sustained by J.M.S.'s uncle are inconsistent with self-defense. We conclude that the HSJ gave undue deference to Hodson's testimony, even relying on it where it contradicted the HSJ's own findings. First, Hodson opined that respondent had used force that exceeded what was necessary for self-defense. He based this on his belief that respondent and J.M.S. had continued to strike her uncle after he had fallen to the ground and was no longer attacking them. But no witness stated that respondent struck J.M.S.'s uncle while the latter was on the ground. And while J.M.S.'s aunt stated that respondent and J.M.S. were out of control, the HSJ found specifically that J.M.S.'s aunt did not witness the incident. Moreover, the HSJ never made a finding that J.M.S.'s uncle had fallen to the ground or that anyone hit him after he had fallen.

Second, Hodson opines that multiple blows are inconsistent with a theory of self-defense. But multiple blows are not inconsistent with self-defense in a situation where an attacker continues to attack after being struck. The record shows that J.M.S.'s uncle has a criminal history and a reputation for violence. He is larger than respondent, and he was intoxicated and/or high on crack the night of the incident. The record indicates that J.M.S.'s uncle was not disabled by a single blow. Nor did the HSJ find that respondent struck J.M.S.'s uncle after the uncle stopped attacking.

Third, Hodson admits that the medical evidence is far from clear and that he is not a medical expert. The record does not indicate where the fracture in J.M.S.'s uncle's arm occurred and whether the location is consistent with a defensive wound. The record does

not indicate whether the skull fractures could have been sustained from a single blow to the head, or if any of the fractures could be consistent with a fall to the ground.

Fourth, Hodson mentions that there may have been a duty to retreat if respondent, J.M.S., and the two children were in the car at the same time. But the HSJ found that J.M.S. did not enter the car when she retrieved the hammer. The HSJ made no finding that it was unreasonable for respondent to exit the car and assist his pregnant girlfriend.

Fifth, assuming that some of the injuries to J.M.S.'s uncle were inflicted by force exceeding self-defense or defense of others, the HSJ did not explain which—if any—of the fractures sustained were the result of excessive force. Nor did the HSJ explain which—if any—of the fractures are attributable to respondent, as opposed to J.M.S.

Sixth, the HSJ did not explain why Hodson's 2004 opinion should carry more weight than the opinion of the county attorney who declined to prosecute respondent in 1999.

We therefore conclude that the HSJ's finding that the medical evidence is inconsistent with self-defense is not supported by substantial evidence. Because we conclude that the HSJ's two factual findings regarding self-defense are not supported by substantial evidence, we conclude that the HSJ's determination that respondent failed to prove self-defense or defense of another by a preponderance of the evidence is not adequately supported. We therefore affirm the district court's reversal of the commissioner's decision to disqualify respondent.

Because we affirm the district court's decision that the HSJ's determination is unsupported by substantial evidence, we do not reach the issue of whether the

commissioner's decision was arbitrary or capricious. For the same reason, we also decline to reach the issue of whether the HSJ misapplied the law of self-defense.

**Affirmed.**