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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-0657**

Alex Sieh,  
Relator,

vs.

Cooperating Community Programs Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed April 21, 2009  
Affirmed  
Johnson, Judge**

Department of Employment and Economic Development  
File No. 420315-3

Alex Sieh, 2709 79th Avenue North, Brooklyn Park, MN 55444-1830 (pro se relator)

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MN 55101-1351 (for respondent Department)

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

## **UNPUBLISHED OPINION**

**JOHNSON, Judge**

Cooperating Community Programs Inc. (CCP) terminated the employment of Alex Sieh after learning that he had kicked one of CCP's vulnerable adult clients. Sieh sought unemployment benefits but was deemed ineligible on the ground of aggravated employment misconduct. We affirm.

### **FACTS**

Sieh worked for CCP for approximately 16 months as a job coach for developmentally disabled adults. He worked directly with CCP's clients, assisting them in developing and maintaining employment skills.

On September 25, 2007, one of the clients for whom Sieh had responsibility reported to a staff member that Sieh had kicked another adult client, T.K., in the shins several times after T.K. swore and spit. When approached by a staff member, T.K. confirmed that Sieh had kicked one of his shins. Another client also stated that Sieh had kicked T.K. a few times. Sieh promptly was placed on a leave of absence. After an informal internal investigation, CCP terminated Sieh's employment on October 1, 2007.

Sieh later requested unemployment benefits. The Minnesota Department of Employment and Economic Development (DEED) denied his application on the ground that he had engaged in aggravated employment misconduct. When Sieh pursued an agency appeal, an unemployment law judge (ULJ) affirmed the initial determination after conducting a telephonic hearing over the course of three days. Upon Sieh's request for reconsideration, the ULJ affirmed her decision that Sieh was ineligible for benefits

because he had engaged in aggravated employment misconduct. Sieh appeals by way of a writ of certiorari.

## **DECISION**

This court reviews a ULJ's decision denying benefits to determine whether the findings, inferences, conclusions, or decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record. *See* Minn. Stat. § 268.105, subd. 7(d) (Supp. 2007). The ULJ's factual findings are viewed in the light most favorable to the decision being reviewed. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). The ultimate determination whether an employee was properly found to be ineligible for unemployment benefits is a question of law, which is reviewed de novo. *Id.*

The ULJ determined that Sieh is ineligible for unemployment benefits because he engaged in aggravated employment misconduct. "An applicant who was discharged from employment by an employer is ineligible for all unemployment benefits . . . if . . . the applicant was discharged because of aggravated employment misconduct as defined in subdivision 6a." Minn. Stat. § 268.095, subd. 4, 4(2) (Supp. 2007). Because CCP provides services for developmentally disabled adults, "aggravated employment misconduct includes an act of patient or resident abuse . . . as defined in section 626.5572." Minn. Stat. § 268.095, subd. 6a(a)(2) (Supp. 2007). Section 626.5572 defines "Abuse," in relevant part, as "[c]onduct which is not an accident or therapeutic conduct," including "hitting, slapping, kicking, biting, or corporal punishment of a

vulnerable adult.” Minn. Stat. § 626.5572, subd. 2(b)(1) (2006). The ULJ found that Sieh’s conduct was “not an accident or accepted therapeutic conduct.”

Sieh makes four arguments. First, he argues that the ULJ improperly considered hearsay evidence. An evidentiary hearing is “not an adversarial proceeding,” but the ULJ “must ensure that all relevant facts are clearly and fully developed.” Minn. Stat. § 268.105, subd. 1(b) (Supp. 2007). DEED promulgates its own rules for evidentiary hearings, and those rules need not “conform to common law or statutory rules of evidence and other technical rules of procedure.” *Id.* Thus, “[a]ll competent, relevant, and material evidence” may be considered part of the record. Minn. R. 3310.2922 (2007). A ULJ may receive hearsay into evidence if it has probative value that may be relied on by “reasonable, prudent persons . . . in the conduct of their serious affairs.” *Id.*

At the hearing, Kimberly Bright, operations manager for CCP, testified that two clients had told her that they had seen Sieh kick T.K.’s shins. Similarly, Diane Madson, operations director and maltreatment reviewer for CCP, testified that both of the clients had told her that Sieh had kicked T.K. four to five times. Madson also testified that T.K. had told her that Sieh had kicked him. This testimony is directly relevant to the essential issue: whether Sieh engaged in aggravated employment misconduct. The ULJ received evidence concerning the reliability of the clients who provided information during the internal investigation. Specifically, Madson testified that although each of the witnesses previously had been inaccurate in reporting other events, she considered their reports concerning this event to be reliable because the three reports were consistent, because T.K. had visible injuries, and because the three clients generally do not interact with one

another. We believe that a “reasonable, prudent person” responsible for determining whether Sieh engaged in aggravated misconduct would rely on Bright’s testimony and Madsen’s testimony concerning their investigation into the accusations. *Id.* We note also that Sieh had ample opportunity to cross-examine Bright and Madson and CCP’s two other witnesses, and he also offered his own testimony and documentary evidence on the relevant issues. Thus, the ULJ did not err by admitting hearsay testimony.

Second, Sieh argues that the ULJ improperly credited the employer’s version of events over his own version. We must “view the ULJ’s factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ.” *Skarhus*, 721 N.W.2d at 344 (citation omitted). The ULJ specifically found that Sieh’s “denials and testimony were not credible or supported by the evidence” because his testimony “was contradictory during the hearing and contradicted by the consistent testimony of” the employer’s witnesses. Sieh does not offer any specific reasons why the employer’s witnesses are not credible. Because of our deference to a ULJ’s credibility determinations, *see id.*, we cannot conclude that the ULJ erred by crediting the employer’s version of events over Sieh’s version.

Third, Sieh argues that CCP’s real reason for terminating him was retaliation for a report he made to the Minnesota Department of Human Services (DHS) on September 28, 2007. Specifically, Sieh reported to DHS that CCP inadequately supervised its clients on September 25 by allowing them to kick one another. Sieh’s argument again implicates the ULJ’s credibility determinations. CCP introduced evidence that it terminated Sieh because he had kicked one of CCP’s clients. There is substantial

evidence in the record to support the ULJ's determination that Sieh engaged in aggravated employment misconduct. *See* Minn. Stat. § 268.105, subd. 7(d). Thus, the ULJ did not err by crediting CCP's evidence concerning its reasons for terminating Sieh.

Fourth, Sieh argues that the ULJ was "too hasty" with him when it was his turn to present evidence. A ULJ should conduct an evidentiary hearing "as an evidence gathering inquiry and not an adversarial proceeding." Minn. Stat. § 268.105, subd. 1(b). The ULJ "must ensure that all relevant facts are clearly and fully developed." *Id.* Furthermore, in conducting the hearing, a ULJ has a duty to "exercise control over the hearing procedure in a manner that protects the parties' rights to a fair hearing." Minn. R. 3310.2921 (2007). A hearing generally is considered fair and even-handed if both parties are afforded an opportunity to give statements, cross-examine witnesses, and offer and object to evidence. *See Ywsyf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529-30 (Minn. App. 2007).

Sieh's contention is not supported by the record. The telephonic hearing occurred over three days so as to give each side a full opportunity to present evidence. The transcript of the hearing is 172 pages long. Sieh had ample opportunity to cross-examine each of CCP's witnesses. The ULJ limited Sieh's questioning and testimony only when it was not relevant to the issues presented. At no point in the transcript did Sieh indicate that he needed more time or that he felt pressured. When the hearing was continued a second time, the ULJ specifically told Sieh that he was entitled to have witnesses of his own, to submit written statements by witnesses, and to have subpoenas issued to compel the testimony of witnesses, but Sieh did not do so. Furthermore, as the hearing

concluded, the ULJ asked Sieh whether he had any additional evidence or testimony to present, and he answered in the negative. Thus, our review of the hearing transcript causes us to conclude that Sieh was given a fair and even-handed hearing. *See Ywswf*, 726 N.W.2d at 529-30.

**Affirmed.**