

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0656**

Ebony Webb,
Relator,

vs.

Methodist Hospital,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 12, 2009
Affirmed
Halbrooks, Judge**

Department of Employment and Economic Development
File No. 36810-3

Ebony Webb, 5309 2nd Avenue South, Minneapolis, MN 55419 (pro se relator)

Richard R. Voelbel, Brian T. Benkstein, Felhaber, Larson, Fenlon & Vogt, P.A., 220 South 6th Street, Suite 2200, Minneapolis, MN 55402 (for respondent Methodist Hospital)

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

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Relator challenges an unemployment-law judge's decision that she is ineligible for unemployment benefits because she was discharged for misconduct. We affirm.

FACTS

Relator Ebony Webb was employed by respondent Methodist Hospital from July 2000 through October 11, 2007, as an insurance-selection specialist. On October 3, 2007, another employee observed relator leave her desk unattended for about six minutes. When relator learned that management had been informed of her absence, she confronted two fellow employees. Relator's confrontation with the co-workers caused them to feel alarmed or threatened. The next day, three managers met with and disciplined relator. They imposed a three-day suspension and required relator to prepare letters of apology to the coworkers she had confronted. On October 10, relator returned to work with a letter saying that she did not believe that she owed anyone an apology. The managers told relator that her letter was unacceptable and that she needed to produce acceptable letters, explaining that she meant no harm and that she was sorry anyone took offense. The next day, relator returned with a letter saying, "I am submitting this letter of apology . . . I believe that I have done nothing wrong." Relator was discharged the same day.

Respondent Department of Employment and Economic Development (DEED) denied relator's application for unemployment benefits after determining that she was ineligible because she had been discharged for misconduct. Relator appealed, and an unemployment-law judge (ULJ) held an evidentiary hearing. The hearing was initially

scheduled for November 16, 2007, but the unavailability of witnesses required the hearing to be rescheduled for December 6. After hearing from several witnesses over the course of two days and reviewing documents, the ULJ concluded that relator had been discharged for misconduct.

Relator requested that the ULJ reconsider the decision, arguing that she had been prevented from presenting the testimony of a witness favorable to her. The ULJ had contacted the witness by telephone before the hearing concluded, and the witness was prepared to testify on the second day. But when the ULJ attempted to reach relator and her attorney on that day, the ULJ received the attorney's voicemail. After waiting a few minutes, the ULJ tried again and was unsuccessful. Relator's witness was then excused. When the ULJ finally reached relator and her attorney, he informed them that, because of their unavailability, the witness had been excused. But the witness's proposed testimony would have related only to the events of October 3. Because the proposed testimony would not have affected the ULJ's determination that relator's refusal to provide letters of apology was misconduct, making her ineligible for benefits, the ULJ declined to hold an additional evidentiary hearing and affirmed the earlier decision. This certiorari appeal follows.

DECISION

I.

Relator argues that the ULJ erred in refusing to hold an additional hearing to take testimony from her proposed witness. We review a ULJ's decision whether or not to hold an additional hearing for an abuse of discretion. *Skarhus v. Davanni's Inc.*, 721

N.W.2d 340, 345 (Minn. App. 2006); *see also Ywsyf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007) (stating that we defer to the decision not to hold an additional evidentiary hearing so long as the ULJ acted within his discretion).

A ULJ “must order an additional evidentiary hearing” if a party shows that additional evidence “would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence.” Minn. Stat. § 268.105, subd. 2(c)(1) (Supp. 2007). The statute does not define “good cause” for additional-evidence purposes, but it does define “good cause” in the context of a party’s failure to participate in the hearing: “a reason that would have prevented a reasonable person acting with due diligence from participating.” *Id.*, subd. 2(d) (Supp. 2007).

Relator argues that an additional hearing should have been granted because her proposed witness observed the events leading up to her discharge. But the proposed witness observed only the October 3 events; she would not be able to testify about the subsequent disciplinary meetings and relator’s failure to comply with her employer’s requests for letters of apology. Based on the limited nature of the witness’s proposed testimony, the ULJ properly concluded that her testimony was not likely to change the outcome.

Additionally, relator is unable to meet the good-cause element. The ULJ did not take the proposed witness’s testimony because although the witness was available, the ULJ was unable to reach relator and her attorney. Because relator and her attorney knew that the ULJ would be calling, it was relator’s lack of due diligence that prevented her proposed witness from testifying.

We therefore conclude that the ULJ's decision not to hold an additional evidentiary hearing was not an abuse of discretion.

II.

Relator assigns error to two administrative irregularities.

DEED advised this court that because the final tape of the evidentiary hearing was misplaced, only a partial transcript is available. To replace the missing portion of the transcript, we ordered the preparation of a statement of proceedings under Minn. R. Civ. P. 110.03. Because relator appears pro se, we shifted the obligation of preparing the statement to DEED and ordered relator to file any objections or proposed amendments. She did not do so. We will disregard defects in a pro se relator's brief, but pro se status does not relieve a party "of the necessity of providing an adequate record and preserving it in a way that will permit review." *Thorp Loan & Thrift Co. v. Morse*, 451 N.W.2d 361, 363 (Minn. App. 1990), *review denied* (Minn. Apr. 13, 1990). Relator's opportunity to object to any claimed defects in the statement of proceedings was during the period when it was proposed; it is too late to argue inaccuracy or incompleteness.

When DEED gathered the various documents in the record in preparation for this appeal, it discovered that relator's letter requesting that the ULJ reconsider his decision had been misplaced and so informed this court. But it does not appear that this recordkeeping irregularity affected relator's request for reconsideration. The ULJ issued a decision responding to her request. Relator does not raise any issues requiring us to examine her argument for reconsideration. Neither DEED nor the employer is arguing

that relator waived any issues or proceeded in an untimely manner. Absent any of these claims, DEED's recordkeeping error is not redressable.

III.

Relator's informal brief directly raises only procedural issues; it indirectly challenges the ULJ's conclusion that she was dismissed for employee misconduct. We will affirm a ULJ's decision unless, among other reasons, the decision is not supported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (Supp. 2007).

An employee discharged for misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (Supp. 2007). Misconduct is conduct amounting to "a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee." *Id.*, subd. 6(a)(1) (Supp. 2007).

Whether an employee committed an act is a fact question on which we defer to the ULJ; whether the alleged act constitutes employment misconduct is a question of law we review de novo. *Skarhus*, 721 N.W.2d at 344. Knowingly violating an employer's reasonable requests is employment misconduct. *Montgomery v. F & M Marquette Nat'l Bank*, 384 N.W.2d 602, 604 (Minn. App. 1986), *review denied* (Minn. June 13, 1986).

Relator does not contest the finding that she did not comply with employer's request for letters of apology; nor does she argue that employer's request that she apologize was unreasonable. The ULJ's findings are substantially supported in the record, and the conclusion that relator engaged in misconduct is not error.

Affirmed.