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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-146**

Victoria Lampman,
Relator,

vs.

Hope Coalition,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed December 22, 2009
Affirmed
Wright, Judge**

Minnesota Department of Employment and Economic Development
File No. 21218939-3

Anne M. Loring, P.O. Box 6873, Minneapolis, MN 55406 (for relator)

Hope Coalition, P.O. Box 62, Red Wing, MN 55066 (respondent)

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Considered and decided by Wright, Presiding Judge; Ross, Judge; and Crippen,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

WRIGHT, Judge

Relator challenges the determination of the unemployment law judge (ULJ) that she is ineligible to receive unemployment benefits because she was discharged for employment misconduct, arguing that (1) her actions do not constitute employment misconduct; (2) the ULJ's decision is based on factual findings that are not supported by substantial evidence and a conclusion that is arbitrary and capricious; and (3) the ULJ failed to make statutorily required credibility determinations. We affirm.

FACTS

Relator Victoria Lampman worked as a family advocate for respondent Hope Coalition, an organization that works with women and children who are fleeing domestic violence. Although Lampman's position ordinarily did not involve courtroom support, her supervisor permitted her to accompany a client to a hearing at which her client's husband, an alleged abuser, would be present. In this capacity, Lampman was required to provide all necessary support to her client by helping her maintain her composure on the day of the hearing and reduce her client's stress by providing driving services.

After her client declined Lampman's request to meet at 7:00 a.m. because it would not allow for adequate travel time and preparation, Lampman agreed to meet her client at a residential shelter at 6:30 a.m. Lampman also agreed to transport her client and her client's children to their childcare provider, although she was not authorized to do so, before proceeding with her client to the hearing.

On the day of the hearing, Lampman's alarm clock malfunctioned, and she failed to arrive at the shelter at 6:30 a.m. as promised. When the shelter staff contacted Lampman at her home at approximately 6:30 a.m., Lampman stated that "she was on her way." Because Lampman did not arrive by 6:45 a.m., the shelter staff again spoke with Lampman at her home, who stated that "she was coming." When Lampman had not arrived at the shelter by 7:00 a.m., her client woke another resident, borrowed gas money, and drove 80 miles per hour with her children in the car so that she could take them to their childcare provider and arrive at the hearing on time.

After arriving late at the shelter and discovering that her client had departed, Lampman drove to the courthouse. Lampman contacted the childcare provider and advised her to relay to Lampman's client the revised plan to meet at the courthouse.

Lampman attended the hearing with her client and then returned to Hope Coalition's offices. Later that day, Hope Coalition terminated Lampman's employment.

Lampman applied for unemployment benefits with the Department of Employment and Economic Development (department). After a department adjudicator determined that Lampman was ineligible to receive unemployment benefits because she had been discharged for employment misconduct, Lampman appealed. At the hearing, the ULJ admitted into evidence a letter written by Lampman's client, who did not testify. The letter states that despite the client's efforts, when the client arrived at the hearing she was crying and she appeared disheveled before the judge. The client also recounted that she could not answer the judge's questions because she was still upset from the drive and the fear of being late. She "felt stressed out and embarrass[ed]." Hope Coalition

executive director Carl Evans testified that the shelter staff advised him that Lampman's client was "visibly distraught" when Lampman failed to arrive at 6:30 a.m. and that Lampman's conduct was "a dereliction of duty" and inconsistent with the service that Hope Coalition provides to its clients. Lampman testified that she and her client arrived before the hearing began and that the hearing went as well as could be expected.

The ULJ concluded that Lampman committed employment misconduct because her negligent or indifferent conduct clearly displayed a serious violation of the standards of behavior her employer has the right to reasonably expect of its employee. *See* Minn. Stat. § 268.095, subd. 6(a) (2008) (defining employment misconduct). The ULJ also based her employment-misconduct determination on a finding that "Lampman's apparent lack of concern for the stress and inconvenience that she caused to [her client] demonstrates indifference toward her job and toward the effect that her tardiness had on [her] client." Based on the determination that Lampman committed employment misconduct, the ULJ concluded that Lampman is ineligible to receive unemployment benefits. *See id.*, subd. 4(1) (2008). Following Lampman's request for reconsideration, the ULJ affirmed the decision. This certiorari appeal followed.

DECISION

I.

Whether an employee committed employment misconduct presents a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether the employee committed a particular act is a question of fact. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). When we

review the ULJ's factual findings, we apply a deferential standard of review and view those findings in the light most favorable to the decision. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We will not disturb the ULJ's factual findings if they are supported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d)(5) (2008). But whether the act committed by the employee constitutes employment misconduct presents a question of law, which we review de novo. *Scheunemann*, 562 N.W.2d at 34.

Employment misconduct is “any intentional, negligent, or indifferent conduct, on the job or off the job (1) that displays clearly a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee, or (2) that displays clearly a substantial lack of concern for the employment.” Minn. Stat. § 268.095, subd. 6(a). But

[i]nefficiency, inadvertence, simple unsatisfactory conduct, a single incident that does not have a significant adverse impact on the employer, conduct an average reasonable employee would have engaged in under the circumstances, poor performance because of inability or incapacity, good faith errors in judgment if judgment was required, or absence because of illness or injury with proper notice to the employer, are not employment misconduct.

Id.

Lampman maintains that the ULJ erred by concluding that Lampman committed employment misconduct because (1) her tardiness resulted from a “mechanical malfunction” and was entirely inadvertent, and (2) she failed only in providing “a fraction of the total service she had been expected to provide.”

Lampman argues that, because her alarm clock malfunctioned, her failure to arrive at the shelter at 6:30 a.m. was inadvertent, not employment misconduct. But Lampman's argument mischaracterizes what the ULJ determined constituted employment misconduct. Lampman committed employment misconduct by negligently failing to fulfill commitments that she made to her client and by negligently making a commitment that she could not fulfill. Even accepting the inadvertence of the alarm-clock malfunction, Lampman's subsequent conduct demonstrates her failure to fulfill several commitments that she made to both her client and her employer, constituting a serious violation of the standards of behavior that her employer has the right to expect of its employees.

Lampman's conduct after the alarm-clock malfunction included two misrepresentations to the shelter staff when she stated that she was on her way. If Lampman had been en route at either 6:30 or 6:45 a.m., she would have arrived before her client's late departure and would have been available to assist in devising a new plan. Instead, this conduct delayed her client's departure and caused her client to make alternative, last-minute arrangements, creating stress that Lampman was employed to minimize.

Moreover, independent of the alarm-clock malfunction, the plan that Lampman agreed to could not be fulfilled without violating the rules. Lampman could not transport her client's children to daycare as she committed to do because she failed to attend the required training. This lapse resulted in an inability to meet her client's needs and her employer's reasonable expectations. Thus, Lampman's reliance on the inadvertence of

her alarm clock's failure does not preclude a determination that she was discharged for employment misconduct.

Lampman seeks to minimize her failure to provide services to her client, arguing that only a fraction of the services she committed to provide to her client that day were unmet. Indeed, Lampman attended the hearing with her client and remained with her client after the hearing. But the other lapses addressed above negatively affected her client's court appearance and exacerbated, rather than minimized, her client's stress. That Lampman arrived late and arguably fulfilled some of the commitments that she made to her client does not ameliorate the unnecessary stress that Lampman's failures caused her client to experience, nor does it negate the ULJ's determination of employment misconduct.

Accordingly, the ULJ did not err by concluding that Lampman was discharged for employment misconduct.

II.

Lampman argues that her substantial rights were prejudiced because the ULJ's factual findings that her client was "visibly distressed," that her client suffered negative financial consequences, and that Lampman lacked concern about the effect of her actions on her client are not supported by substantial evidence. Lampman also asserts that the ULJ's finding that Lampman's conduct caused her client considerable stress is arbitrary and capricious. These arguments are founded on Lampman's contention that the ULJ erred by relying on her client's letter when her client did not testify at the hearing and by

relying on executive director Evans's testimony, which was based on statements made to him by the shelter staff.

On certiorari appeal, we review the ULJ's decision to determine whether the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are "(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious." Minn. Stat. § 268.105, subd. 7(d)(5). In doing so, we will not disturb the ULJ's factual findings when the evidence substantially sustains them. Minn. Stat. § 268.105, subd. 7(d)(5).

Substantial evidence means "(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." *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002); *see also Black's Law Dictionary* 1566 (9th ed. 2009) (defining substantial-evidence rule as "[t]he principle that a reviewing court should uphold an administrative body's ruling if it is supported by evidence on which the administrative body could reasonably base its decision").

At an unemployment-benefits hearing, the ULJ is not bound by the rules of evidence and may admit "[a]ll competent, relevant, and material evidence, including records and documents in the possession of the parties." Minn. R. 3310.2922 (2007). This evidence may include hearsay "if it is the type of evidence on which reasonable,

prudent persons are accustomed to rely in the conduct of their serious affairs.” *Id.* We have affirmed reliance on hearsay evidence that is detailed, corroborated, and free from any suggestion of bias on the part of the affiant. *See Holtan v. Gnan Trucking, Inc.*, 379 N.W.2d 571, 574 (Minn. App. 1985) (stating that ULJ properly relied on three independent customer letters, which were “clear, straightforward, and itemized with specific detail,” and written by customers with no reason to fabricate complaints or “color their observations to worsen the facts”); *see also Marn v. Fairview Pharmacy Servs. LLC*, 756 N.W.2d 117, 123 (Minn. App. 2008) (concluding that ULJ properly relied on witnesses’ testimony regarding what they heard on voicemail messages and what they contemporaneously wrote down although voicemail messages were not introduced into evidence), *review denied* (Minn. Dec. 16, 2008).

The letter from Lampman’s client provided a detailed, firsthand account of the events that occurred on the date of the hearing. The record provides no basis to conclude that the client fabricated the account. This is precisely the type of hearsay on which reasonable and prudent people rely when conducting their serious affairs. As such, this evidence was properly admitted by the ULJ. Similarly, Evans’s testimony is based on statements made by shelter staff to Evans. It is similarly admissible evidence.

Lampman argues that the ULJ’s finding that her client was “visibly distressed” is not supported by substantial evidence. But because her client’s letter and Evans’s testimony were properly admitted, there is substantial evidentiary support for this finding.

Lampman next contends that the evidence does not support the ULJ’s finding that Lampman’s failure to fulfill her commitments to her client caused her client to suffer

negative financial consequences. Because the record establishes that Hope Coalition reimbursed Lampman's client for the cost of gas, we agree. But in light of the ample evidentiary support of the impact of Lampman's conduct on her client, this single erroneous finding does not constitute reversible error or prejudice Lampman's substantial rights.

Lampman also maintains that the ULJ's finding that Lampman displayed a lack of concern over the effect her actions had on her client is not supported by substantial evidence. Although Lampman testified that she was concerned about her client, she also stated that, "everything went as well as could be expected," and "I did the best with what I could." Lampman did not express remorse for her failure to satisfy the commitments that she made to both her client and her employer, and she did not acknowledge or take responsibility for the stress that her failures caused her client. Lampman's actions, together with her dismissive responses regarding the stress her client experienced as a result of Lampman's failures, support the ULJ's determination. When considering Lampman's testimony as a whole and viewing the ULJ's factual findings in the light most favorable to the decision, there is substantial evidence to support the finding that Lampman lacked concern for the stress and inconvenience that her client experienced.

Finally, Lampman contends that the ULJ's finding that Lampman's conduct caused her client considerable stress was arbitrary and capricious. But the record directly addresses Lampman's client's emotional response to Lampman's actions from the point when Lampman failed to arrive at the shelter on time through the court hearing. And although Lampman asserts that the ULJ failed to consider all potential factors that could

have affected her client, there is no legal authority requiring such an undertaking. With ample evidence addressing how Lampman's conduct affected her client, the record establishes that the ULJ's determination was not arbitrary and capricious.

III.

Lampman asserts that the ULJ erred by failing to make the statutorily required credibility determinations. A ULJ must make credibility determinations setting forth the reasons for crediting or discrediting testimony "[w]hen the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision." Minn. Stat. § 268.105, subd. 1(c) (2008). But if credibility determinations do not have a significant effect on the decision, the ULJ need not make any dispositive credibility determinations. *See id.*

Lampman argues that if the ULJ believed Lampman's testimony, the ULJ would have concluded that Lampman provided her client with satisfactory service. But this contention ignores the undisputed record regarding the services that Lampman failed to provide and the effect of that failure on her client. When the record is considered in its entirety, the absence of express credibility findings is not erroneous.

Affirmed.