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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1054**

Thomas Bibeau,
Relator,

vs.

Presbyterian Homes
Housing & Assisted Living Inc.,
Respondent,

Department of Employment
and Economic Development,
Respondent.

**Filed February 23, 2010
Affirmed
Klaphake, Judge**

Department of Employment and Economic Development
File No. 21652025-3

Thomas M. Bibeau, Inver Grove Heights, Minnesota (pro se relator)

Presbyterian Homes Housing and Assisted Living, Inc., Roseville, Minnesota
(respondent)

Lee B. Nelson, Amy R. Lawler, Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent Department of Employment and
Economic Development)

Considered and decided by Klaphake, Presiding Judge; Peterson, Judge; and
Shumaker, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

In this appeal by writ of certiorari, relator Thomas Bibeau challenges the decision of the unemployment law judge (ULJ) determining that relator was ineligible for unemployment benefits because he was discharged for employment misconduct. Relator argues that his supervisor at respondent employer Presbyterian Homes Housing & Assisted Living, Inc., created a hostile work environment, that he was not insubordinate, and that the ULJ was biased.

Because substantial evidence supports the ULJ's findings and the findings support the determination that relator violated his employer's reasonable standards, and because our review of the record shows no bias on the part of the ULJ, we affirm.

DECISION

This court may reverse or modify the ULJ's decision if, among other things, the decision is based on unlawful procedure or is unsupported by substantial evidence or is arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2008). We review the ULJ's factual findings in the light most favorable to the findings and will not disturb the findings if the evidence substantially supports them. *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether an employee committed a certain act is a factual question, but whether this act constituted employment misconduct is a question of law, which we review de novo. *Id.* We defer to the ULJ's credibility determinations, although the ULJ must set forth reasons "for crediting or discrediting that testimony." *Id.*; Minn. Stat. § 268.105, subd. 1(c) (2008). Here, the ULJ found the testimony of the

employer's witnesses more credible, because they corroborated each other, "describe[d] a more likely chain of events," and were "more persuasive witnesses than [relator]."

The ULJ determined that relator was ineligible for benefits because he was discharged for employment misconduct. Minn. Stat. § 268.095, subd. 4(1) (2008). "Misconduct" is defined as "any intentional, negligent, or indifferent conduct . . . (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." *Id.*, subd. 6(a) (2008).

An employee who refuses to follow an employer's reasonable policies and requests commits employment misconduct. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 805 (Minn. 2002). If the employer articulates a reasonable basis for a policy, an employee can be required to abide by it, despite a difference of opinion as to whether it is a good policy. *See id.* (discussing employer's requirement of immediate report of injury, despite difference in timing in Workers' Compensation Act and stating that employer's reasons for requirement to minimize seriousness of injury and to permit employer to prompt investigation of claims, were sufficient). If an employee deliberately, intentionally, and in a calculated manner refuses to carry out an employer's directive, the refusal is employment misconduct. *Id.* at 806.

Here, relator's supervisor received a complaint from another employee, who stated that relator and a facility resident participated in a somewhat graphic discussion of their respective wives' private health concerns in a public area of the facility. Relator's supervisors met with him and directed relator not to discuss private issues in a public

place with residents because of privacy concerns and not to discuss the coaching session with the affected resident, because it could upset the resident. Relator ignored this directive and told the resident that he had been reprimanded. The resident became upset and approached a supervisor. Relator's supervisor and the human resources manager met with relator and reprimanded him again for ignoring the previous instruction. On the same day, relator attended an employee meeting and dominated the meeting with complaints about the reprimand; he ignored the meeting facilitator's attempts to redirect the meeting, which eventually was ended because of relator's behavior. Following this, relator was discharged as insubordinate.

The ULJ noted that there was "a pattern of behavior stretching over two days." A pattern of violations of an employer's directives or policies, even when the violations are not closely related, can be "the last straw, demonstrating the employee's utter disregard for the employer's interests." *Flahave v. Lang Meat Packing*, 343 N.W.2d 683, 686 (Minn. App. 1984). In addition to the incidents culminating in relator's discharge, the record contains other evidence of relator's refusal to abide by the employer's policies and directives, including refusing to honor weight-lifting restrictions, telling his supervisor to "shut up," refusing to leave work for the day when instructed to do so, and violating the dress code. Taken all together, this conduct evidences a pattern of disregard of the employer's reasonable policies and directives, and constitutes employment misconduct.

Relator implies that the ULJ did not conduct the hearing in a fair manner, asserting that the ULJ was not impartial because "most of the time over the phone went to

Presbyterian Homes. [I] [f]elt that the judge missed many issues including workplace abuse and verbal abuse.”

The ULJ is required to “ensure that all relevant facts are clearly and fully developed.” Minn. Stat. § 268.105, subd. 1(b) (2008). The ULJ repeatedly asked relator if he understood the proceedings and encouraged him to ask questions. Relator submitted a packet of documentary evidence, including many awards for his work, which were received into evidence. There is no indication from the record that the ULJ favored one party over the other. In relator’s request for reconsideration, he argues that the ULJ favored the employer’s witnesses, but this essentially involved a credibility determination that the ULJ is required to make. Finally, relator states in the request for reconsideration that the ULJ made many mistakes “from people’s names to the dates of the meeting.” The ULJ made some minor errors but none of these errors affect the legal basis for the decision. A review of the record reveals no indication of unfairness in the hearing.

The ULJ’s factual findings are supported by substantial evidence in the record. Based on these findings, which demonstrate a pattern of refusing to follow his employer’s reasonable directives and policies, we conclude that the ULJ did not err by determining that relator was ineligible for unemployment benefits because he was discharged for employment misconduct.

Affirmed.