STATE OF MINNESOTA
IN COURT OF APPEALS
A09-888

DiAnne Bean,
Relator,

vs.

Greater Minnesota Credit Union,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed March 23, 2010
Reversed
Shumaker, Judge

Department of Employment and Economic Development
File No. 21549651-3

Howard L. Bolter, Borkon, Ramstead, Mariani, Fishman & Carp. Ltd., Minneapolis, Minnesota (for relator)

Greater Minnesota Credit Union, Mora, Minnesota (respondent employer)

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

Considered and decided by Peterson, Presiding Judge; Shumaker, Judge; and Collins, Judge.*

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

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

SHUMAKER, Judge

Relator challenges an unemployment law judge's (ULJ) determination that she is ineligible for unemployment benefits because she was discharged for employment misconduct based on negligent performance of her employment duties. Relator claims that she had not been negligent in performing her duties, but instead made a good-faith error in judgment. We agree and reverse.

FACTS

Relator DiAnne Bean was hired as a full-time branch manager on March 28, 2005, by Greater Minnesota Credit Union (GMCU), a financial institution that makes secured loans to companies. GMCU discharged her for employment misconduct two and one-half years later.

During Bean's employment, GMCU held security interests in certain vehicles at Trent Snyder's car dealership in Princeton. The vehicles secured a loan of $750,000. One of Bean's functions as a branch manager was to inspect the vehicles on Snyder's lot each month to ensure that vehicles of sufficient value to maintain adequate security for the loan were there. GMCU had no written procedure for performing the requisite inventory inspection, and Bean's training in conducting inventory inspections was informal.

Bean's initial training for inspecting and recording the vehicle inventory was done by Kari Tetnowski, a commercial loan assistant. Bean was given an inventory list of the Vehicle Identification Numbers (VIN) of the secured vehicles and their associated values.

She was trained to inspect "every vehicle and match it with the floor plan list secured by GMCU." Additionally, she was instructed to submit a spreadsheet of her findings, called a summary, to GMCU's commercial loan department. If any vehicle listed on the inventory sheet was not on Snyder's lot, Bean was to provide an explanation for its absence.

Bean consistently conducted inventory inspections of Snyder's lot in this manner until GMCU hired a new commercial loan officer, Len Meisnor. The Vice President of Lending Operations for GMCU testified that Meisnor was a "full-fledged commercial loan officer" when GMCU hired him, and that Meisnor independently handled floor plans and oversaw floor-plan loan inspections conducted by other employees. Meisnor accompanied Bean on an inspection of the Snyder vehicles, and he told her that she did not need to inspect each vehicle individually. Rather, Meisnor told her that she could just "spot check" approximately 12 vehicles, and then count the remaining vehicles and compare that number to the inventory sheet. Thereafter, Bean followed this inspection procedure, and, if the number of cars on her inventory sheet was similar to the number of cars in the lot, Bean would "assume that all of [GMCU's] cars [were] there . . . ." GMCU assumed at this time that Snyder's sole line of credit was with GMCU.

GMCU and Bean were unaware that Snyder had procured additional lines of credit from other finance companies, and provided as security the same vehicles already pledged for the GMCU loan. In October 2008, Snyder confessed to GMCU that he had been selling secured vehicles without repaying GMCU. Snyder informed GMCU that he was short more than $550,000 in inventory.

On November 7, 2008, GMCU gave Bean a written warning because she had not been following the proper procedures for floor-plan inspections. GMCU attempted to recover its loss from Snyder, but was unable to do so. On November 24, 2008, GMCU discharged Bean for failing to properly perform floor-plan inspections, and thereby causing a financial loss to the credit union. Bean established a benefit account with respondent Department of Employment and Economic Development (DEED), but DEED determined that Bean had been discharged for employment misconduct and was therefore ineligible for unemployment benefits. Bean appealed, and a ULJ held a de novo hearing on February 23, 2009. The ULJ determined that Bean's conduct was negligent, that it clearly displayed a serious violation of the standard of behavior reasonably to be expected by GMCU, and that it clearly displayed a substantial lack of concern for her employment. Therefore, the ULJ ruled that Bean was not entitled to unemployment benefits because she was terminated for employment misconduct. On March 13, 2009, Bean filed a request for reconsideration. On April 17, 2009, the findings of fact and decision of the ULJ were affirmed. Bean petitioned to this court for a writ of certiorari to review DEED's decision on May 18, 2009.

D E C I S I O N

Bean claims that the ULJ erred by concluding that her actions constituted employment misconduct. Whether an employee's act constitutes disqualifying misconduct is a question of law, which is reviewed de novo. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Bean argues that she did not commit employment misconduct when she began spot checking the inventory, and therefore is entitled to unemployment benefits. An employee who is discharged for misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008). "Employment misconduct" is defined as

> 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.
>
> Inefficiency, 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., subd. 6(a) (2008) (emphasis added).

The ULJ found that Bean had been terminated for employment misconduct under subdivision 6(a), stating that Bean was negligent and that her conduct "display[ed] clearly a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee and display[ed] clearly a substantial lack of concern for the employment." Bean contends that she acted as any reasonable employee would have acted and that her conduct was a good-faith error in judgment.

Because GMCU had no written policy or instructions for inspecting floor-plan vehicles, Bean necessarily had to rely on what other employees trained her to do. Her first trainer was a commercial-loan assistant, and Bean followed that employee's instructions until another employee told her to follow a different procedure, one that unfortunately resulted in financial loss to GMCU.

The employee who told Bean to "spot check" the vehicles instead of counting each one was not only a commercial-loan officer but was in charge of floor plans and oversaw floor-plan inspections.

Although the respondent GMCU seems to characterize Bean as a bit of an opportunist who took advantage of the spot-check method as a way of reducing her workload, this viewpoint is speculative. The inference supported by the record is that Bean, a non-specialist, deferred to the advice of a person who ostensibly had precise expertise in floor-plan loan procedures. Because the ULJ found that Bean acted negligently, the question is whether she acted as a similarly situated reasonable employee would have acted. *See id.* We hold that she did. A specialist in the particular employment activity in which Bean was engaged told her how to perform one of her job duties. A reasonable employee might have wondered about the adequacy of the new method, and might even have concluded that it was not a good method, but that employee yet would have acted reasonably by relying on a method suggested by an expert in the matter. Further, even if Bean made a judgment error in doing so, it was made in good faith because she relied on the expertise of a superior.

We also note that GMCU itself did not view Bean's spot-checking procedure as dischargeable misconduct until GMCU suffered a financial loss. It is a reasonable inference that GMCU did not fault Bean for relying on a person whom GMCU hired to oversee floor-plan inspections and allowed to hold himself out as having expertise in that aspect of GMCU's business. Nor do we conclude that Bean's reliance was negligent.

Reversed.