STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1182

Robert Chasteen,
Relator,

vs.

Global Medical Instrumentation Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed March 30, 2010
Affirmed
Kalitowski, Judge

Department of Employment and Economic Development
File No. 22066919-3

Robert W. Chasteen, Big Lake, Minnesota (pro se relator)

Global Medical Instrumentation Inc., Ramsey, Minnesota (respondent)

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

Considered and decided by Toussaint, Chief Judge; Kalitowski, Judge; and Randall, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving 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

KALITOWSKI, Judge

Relator Robert Chasteen challenges the unemployment-law judge's decision that relator is ineligible to receive unemployment benefits because he was discharged for employment misconduct. Relator argues that his actions did not amount to misconduct and he was denied a fair hearing because two of his witnesses were not allowed to testify at the evidentiary hearing. We affirm.

D E C I S I O N

In reviewing an unemployment-law judge's (ULJ) eligibility decision, we may affirm or remand the ULJ's decision, or we may reverse or modify it if the relator's substantial rights have been prejudiced because the ULJ's findings or decision are, among other things, made upon unlawful procedure, affected by error of law, or unsupported by substantial evidence in the record. Minn. Stat. § 268.105, subd. 7(d) (2008).

"Whether an employee committed employment misconduct is a mixed question of fact and law." *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). Whether the employee committed a particular act is a question of fact; we review the ULJ's factual findings in the light most favorable to the decision, and we will not disturb the findings if they are substantially sustained by the evidence. *Id*. But whether the act constitutes employment misconduct is a question of law that we review de novo. *Id*.

I.

The ULJ found that relator was discharged from Global Medical Instrumentation Inc. (GMI) for misusing the company cell phone and for threatening GMI's president. The ULJ concluded that relator's misuse of the company cell phone did not amount to employment misconduct because relator was not aware that his 11-year-old daughter was using the cell phone for text messaging until GMI brought it to his attention in February 2009. But the ULJ found that after GMI requested that relator reimburse the company for the cell-phone charges, relator became angry and threatened to report GMI's president for a November 2008 altercation between relator and the president. The ULJ concluded that the threat constituted employment misconduct that disqualified relator from receiving unemployment benefits. Relator argues that his actions did not amount to employment misconduct. We disagree.

An individual discharged from employment is ineligible for unemployment benefits from the Minnesota unemployment insurance program if the applicant was discharged because of employment misconduct. 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." Minn. Stat. § 268.095, subd. 6(a) (2008). If the alleged misconduct involved only a single incident, this fact is to be considered in determining whether the conduct amounts to misconduct under the statutory definition. Minn. Stat. § 268.095, subd. 6(b)(10) (2008). But a single

incident may constitute misconduct disqualifying an employee from receiving benefits "when an employee deliberately chooses a course of conduct that is adverse to the employer." *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 806 (Minn. 2002).

Here, the ULJ's finding that relator threatened the president is supported by substantial evidence in the record. The vice president of GMI testified that relator called him on February 20, 2009, to discuss the cell-phone charges. The vice president stated that relator was belligerent and that it "sounded like there was a possibility [relator] was under the influence." The president testified that when relator called him to discuss the cell-phone charges the same evening, relator became increasingly agitated and threatened to report the November 2008 incident three times before the president hung up on him. The ULJ found that the testimony of GMI's vice president and president was credible because it was clear and direct, and supported by evidence in the record. *See Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006) (stating that "[c]redibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal").

Moreover, the ULJ's determination that threatening the president constituted employment misconduct was not error, because an employer may reasonably expect an employee to cooperate with repayment of cell-phone charges incurred in violation of company policy without resorting to threats to prevent action by the employer. *See* Minn. Stat. § 268.095, subd. 6(a) (defining misconduct as conduct that is "a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee"). Such a threat may be perceived as a violation of trust that has a significant

adverse impact on an employer. *See Skarhus*, 721 N.W.2d at 344 (determining that employee's theft of less than four dollars worth of food in the context of her job responsibilities as a cashier was a violation of trust that constituted employment misconduct although it was a single act, because it had a significant adverse impact on the employer); *Schmidgall*, 644 N.W.2d at 806 (stating that "[a] single incident can constitute misconduct when an employee deliberately chooses a course of conduct that is adverse to the employer").

Relator argues that his actions did not constitute misconduct because the president of GMI assaulted him in November 2008, and thus his accusation was not fraudulent. We disagree. The ULJ acknowledged in her findings that the president angrily grabbed relator's arm in November 2008. But the ULJ's misconduct determination was based on relator's February 2009 threat to report the president for the November 2008 incident, and not on the November 2008 incident.

Relator further argues that his actions did not amount to misconduct because he did not know of the cell-phone misuse until GMI confronted him in February 2009. But because the ULJ determined that relator's threats, not relator's cell-phone misuse were what constituted employment misconduct, this argument fails.

In sum, the ULJ did not err in concluding that relator's actions in angrily threatening the president of GMI constituted employment misconduct disqualifying him from unemployment benefits under section 268.095.

II.

Relator challenges the ULJ's decision on the ground that two of his witnesses were not allowed to testify at the evidentiary hearing. Because the failure of the two witnesses to testify did not prejudice relator's substantial rights, we reject this argument.

An eligibility hearing before a ULJ is an "evidence gathering inquiry." Minn. Stat. § 268.105, subd. 1(b) (2008). The ULJ is responsible for ensuring that "all relevant facts are clearly and fully developed," *id.*, and must conduct the hearing "in a manner that protects the parties' rights to a fair hearing." *Ywswf v. Teleplan Wireless Services, Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007) (citing Minn. R. 3310.2921 (2005)). The ULJ also has the duty to assist unrepresented parties in presenting evidence, but may exclude evidence that is irrelevant, immaterial, or unduly repetitious. *Ywswf*, 726 N.W.2d at 530. The ULJ has the authority to issue subpoenas to compel the attendance of witnesses. Minn. Stat. § 268.105, subd. 4 (2008).

Here, relator indicates that he intended for two coworkers to testify regarding the November 2008 incident, and for GMI's accountant to testify regarding the cell-phone charges. But relator failed to request subpoenas or make arrangements for the testimony, and only one of the three witnesses was available to testify at the hearing.

The ULJ assisted relator in obtaining one witness, a coworker who testified regarding the November 2008 incident. And after inquiring as to the substance of the missing witness's intended testimony, the ULJ's decision to proceed without the witnesses was reasonable. The decision to proceed without the testimony of the other coworker regarding the November 2008 incident was reasonable because the testimony

was duplicative of the testimony of the coworker who did testify; unnecessary in light of the virtually undisputed facts surrounding the incident; and immaterial with regard to the misconduct inquiry, which focused on the February 20, 2009 threat. *See Ywswf*, 726 N.W.2d at 530 (providing that the ULJ may exclude evidence that is irrelevant, immaterial, or unduly repetitious).

In addition, proceeding without the accountant's testimony was reasonable because the phone bills setting forth relator's text-messaging charges were admitted into evidence and relator did not dispute their substance. Relator fails to indicate how the accountant's testimony would enhance or illuminate the evidence of relator's phone charges.

In sum, relator's substantial rights were not prejudiced due to unlawful procedure when two of his witnesses did not testify at the evidentiary hearing.

Affirmed.