STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1704

William Rowland,
Relator,

vs.

The Great Indoors Furniture Company (Corp),
Respondent,
Department of Employment and Economic Development,
Respondent.

Filed July 13, 2010
Affirmed
Stauber, Judge

Department of Employment and Economic Development
File No. 22461891-3

William G. Rowland, Nisswa, Minnesota (pro se relator)

The Great Indoors Furniture Company, Cross Lake, Minnesota (respondent employer)

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

Considered and decided by Peterson, Presiding Judge; Lansing, Judge; and Stauber, Judge.

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

STAUBER, Judge

Relator William Rowland appeals from a decision by an unemployment law judge (ULJ) that he was ineligible to receive unemployment benefits because he had been discharged for misconduct. He contends that his actions were not misconduct because they were the result of his inefficiency or because they constituted a single incident that did not have an adverse effect on his employer. He also argues that the stated reason for his discharge was a pretext and that his employer discharged him because of its financial difficulties. We affirm.

FACTS

Respondent Great Indoors Furniture Company employed relator as a furniture builder from April 18, 2005 through April 13, 2009. Relator worked about 16 hours per week, Monday through Friday, and he was allowed to set his own hours. Throughout relator's employment, the company owner wanted relator to clean up the shop at the end of relator's work day, but relator usually failed to do so. On April 13, 2009, the owner once more asked relator why the shop was not cleaned, and relator responded by telling the owner that if he wanted it done, he could do it himself. The owner then discharged relator from employment.

Relator applied for unemployment benefits, and the Minnesota Department of Employment and Economic Development (DEED) issued a determination of ineligibility. Relator appealed and, after a hearing, the ULJ ruled that relator had been discharged from

employment for misconduct and was ineligible for unemployment benefits. Relator requested reconsideration, and the ULJ affirmed. This certiorari appeal followed.

D E C I S I O N

This court may affirm, remand, reverse, or modify the decision of a ULJ if the substantial rights of the relator may have been prejudiced because the decision was affected by an error of law or unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2008). This court will view the findings of fact in the light most favorable to the ULJ's decision and will defer to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether the particular acts engaged in by the employee constitute employment misconduct is a question of law reviewed de novo. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

An employee who is discharged for misconduct is not eligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008).

> Employment misconduct means 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.

Minn. Stat. § 268.095, subd. 6(a) (2008).

"As a general rule, refusing to abide by an employer's reasonable policies and requests amounts to disqualifying misconduct." *Schmidgall*, 644 N.W.2d at 804. Further, employees of a small business "must perform a variety of duties to allow [it] to function smoothly." *McGowan v. Executive Express Transportation Enterprises, Inc.*, 420 N.W.2d 592, 596 (Minn. 1988). "[A]n employee's intentional refusal to perform a task, as opposed to negligent forgetfulness" will support a determination of misconduct. *Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 207 (Minn. App. 2004), *review denied* (Minn. Mar. 30, 2004). But an employee's simple inability to perform her duties to the satisfaction of her employer does not constitute misconduct. *Bray v. Dogs & Cats Ltd. (1997)*, 679 N.W.2d 182, 185 (Minn. App. 2004).

The ULJ here ruled that regardless of whether it made sense to relator, the owner's request that relator clean up the shop each day was a reasonable request that did not impose an unreasonable burden on relator. Further, relator failed to comply with the employer's instruction, and, on his last day of work, told the owner that if he wanted the shop cleaned he could do it himself. The ULJ concluded that relator's actions amounted to misconduct. Relator disputes this conclusion, arguing that his failure to clean up can be attributed to mere inefficiency on his part and offering various explanations as to why he was unable to get around to cleaning up the shop after he completed his work. He also explains that his comment that the owner should do the sweeping himself was made out of anger and frustration, not out of disregard for his employer.

We must agree with the ULJ. The owner's request for relator to clean up was reasonable, relator consistently failed to comply with the request. The record does not show that relator tried but was unable to perform the task due to inefficiency, but instead shows an intentional refusal. And, on the day of his discharge, rather than complying, he told the owner that if he wanted the task done, he could do it himself. The findings of fact are supported by substantial evidence and demonstrate that relator was discharged for misconduct.

Relator next argues that his discharge resulted from the single incident occurring on April 13, 2009, and was not related to any other discussions he may have had with the owner regarding cleaning up the shop. He contends that he did not receive verbal or written warnings relating to sweeping the floor. Further, he contends that his comment to the employer on that date did not jeopardize the quality of his work or have a significant adverse impact on his employer or the business. Therefore, he contends that the April 13 incident should not constitute misconduct.

The owner testified that he reminded relator "[h]undreds of times in a four-year period" that he needed to clean up the shop. Further, he explained that he wanted this done so that relator would not track dirt onto the showroom floor. The owner described the events of April 13 as the "last straw." An employee's "behavior may be considered as a whole in determining the propriety of [his] discharge and [his] qualification for unemployment compensation benefits." *Drellack v. Inter-County Cmty. Council, Inc.*, 366 N.W.2d 671, 674 (Minn. App.

1985). In light of the owner's testimony, there would have been no basis for the ULJ to rule that the discharge arose out of a single incident on April 13.

Finally, relator argues that he was actually fired because of the owner's financial problems, and he contends that the employer's claim that he was fired for misconduct was a pretext. Relator raised this issue to the ULJ in his request for reconsideration. On reconsideration, the ULJ may not consider evidence not submitted at the evidentiary hearing, except to assess whether an additional evidentiary hearing must be ordered. Minn. Stat. § 268.105, subd. 2(c) (Supp. 2009).[1]

> The unemployment law judge must order an additional evidentiary hearing if an involved party shows that evidence which was not submitted at the evidentiary hearing: (1) would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence; or (2) would show that the evidence that was submitted at the evidentiary hearing was likely false and that the likely false evidence had an effect on the outcome of the decision.

Id. This court will defer to the ULJ's decision regarding whether to hold an additional evidentiary hearing. *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007).

On reconsideration, relator advised the ULJ that he learned that the shop was closing and asserted his belief that the employer started the argument on April 13 to find

[1] On August 12, 2009, the ULJ affirmed on reconsideration. The effective date of the amendments to Minn. Stat. § 268.105, subd. 2 was August 2, 2009, and applied to all department determinations and ULJ decisions issued on or after that date. 2009 Minn. Laws ch. 78, art. 4, § 35 at 616 (amending subdivision 2), 2009 Minn. Laws ch. 78, art. 4, § 52 at 623 (providing that the effective date for section 35 was August 2, 2009 and applied to all department determinations and unemployment law judge decisions issued on or after that date).

a reason to fire him. The ULJ found that there was "no substantial evidence that the employer's stated reason for discharge was not in fact the reason for discharge" and that relator did not have good cause for not submitting this additional evidence previously, so that an additional hearing on the issue was not warranted. Finally, the ULJ declined to find that a different result was warranted and affirmed that the initial decision was factually and legally correct. Relator has not demonstrated that the ULJ erred in his rulings or abused his discretion by not holding an additional evidentiary hearing.

Affirmed.