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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1761**

Frank Williams,  
Relator,

vs.

United Healthcare Services Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed July 20, 2010  
Affirmed  
Halbrooks, Judge**

Department of Employment and Economic Development  
File No. 22502954-3

Frank Williams, Minneapolis, Minnesota (pro se relator)

United Healthcare Services, Inc., c/o Unemployment Services d/b/a TALX, Arvada,  
Colorado (respondent)

Lee B. Nelson, Britt K. Lindsay-Waterman, Minnesota Department of Employment and  
Economic Development, St. Paul, Minnesota (for respondent Department of Employment  
and Economic Development)

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and  
Larkin, Judge.

## **UNPUBLISHED OPINION**

**HALBROOKS**, Judge

Relator Frank Williams brings this pro se certiorari appeal challenging the unemployment-law judge's (ULJ) determination that he is ineligible for unemployment benefits and denying his request for an additional evidentiary hearing. Because we conclude that the ULJ's ineligibility determination is not erroneous and that the ULJ did not abuse his discretion by denying relator's request for a second evidentiary hearing, we affirm.

### **FACTS**

Relator worked as an intake coordinator for respondent United Healthcare Services, Inc. (United Healthcare) from September 17, 2007, through April 27, 2009. On April 15, 2009, relator sent out an e-mail to his coworkers that contained a link to a website that displayed offensive jokes and images. Later that day, relator's manager informed him that his e-mail had violated the United Healthcare e-mail policy. Relator was given a copy of the e-mail policy, and a "Corrective Action Form" was filled out, indicating that relator was "not to forward, send or print any material that would violate the guidelines around E-mail Policy Violation." The e-mail policy at issue states:

DON'T create or forward e-mails that contain inappropriate content including: threatening, insulting, offensive, obscene, discriminatory, derogatory, abusive or harassing language or images; jokes or cartoons; sexually explicit content; religious or political content; large attachments that are not work-related; copyrighted material; e-greeting cards; chain letters; streaming videos; information supporting non-UnitedHealth Group business; or anything illegal.

On April 27, 2009, relator sent an e-mail inviting his coworkers to a concert in support of the Angel Foundation, an organization that provides support to those in cancer treatment and their families. The concert was to take place at Minnetonka Methodist Church, and relator's e-mail indicated that although the concert was free, donations were encouraged. According to United Healthcare, some employees took offense to relator's e-mail because it was soliciting donations. United Healthcare also asserted that relator's e-mail was inappropriate because it was sent during work hours from his United Healthcare e-mail account. Relator was discharged that day for again violating the company's e-mail policy.

Relator applied for unemployment benefits following his termination. Respondent Minnesota Department of Employment and Economic Development (DEED) initially determined that relator was eligible to receive benefits. According to DEED, relator was discharged for violating a company policy but his actions were not employment misconduct "because [relator] was not aware of the policy, procedure, or instructions." United Healthcare filed a timely appeal from this eligibility determination. A notice of appeal was sent to the parties, indicating that an evidentiary hearing would be conducted on June 18, 2009, at 10:45 a.m. The notice failed to indicate a telephone number that the ULJ would use to contact relator. The notice stated: "If you would like the Judge to call you at an alternative telephone number, log into your account . . . and select View and Maintain My Account or contact the Appeals office."

The evidentiary hearing was subsequently postponed until June 24, 2009; relator does not dispute that he received notice of the date change. The ULJ attempted to call

relator at the beginning of the rescheduled hearing, but relator did not answer his phone. The ULJ left relator a voice message instructing relator to contact the ULJ as soon as possible so that relator could participate in the hearing. The ULJ also provided contact information. Relator did not make an appearance at the hearing. Lorena Carr, the customer-service intake supervisor, and Deb Gorman, the manager of site operations, testified for United Healthcare.

The following day, relator sent a letter to the ULJ, explaining why he failed to appear for the hearing. Relator admitted that he confused the date of his hearing, thinking that it was going to take place on the 25th. According to relator, his confusion may have been due to his pain medication. Relator stated in the letter that he called the phone number recited by the ULJ “and was informed by your staff that an email would be sent to you, and that I was to wait to hear from you to be included into the conference.” Relator further asserted that he waited until noon to call back; by that time the hearing had concluded.

The ULJ issued his decision on June 26, 2009, determining that the April 27 e-mail violated United Healthcare’s e-mail policy because it supported a non-United Healthcare business. The ULJ thus concluded that relator’s conduct amounted to employment misconduct and that relator is not entitled to unemployment benefits.

Relator filed a request for reconsideration. In his request, relator contended that his conduct did not display a substantial lack of concern for his employment, and he also stated that he did not immediately review the e-mail policy after the first incident. The ULJ affirmed his initial decision. The ULJ concluded that because relator failed to show

good cause for his lack of an appearance at the original hearing, there was no basis for conducting a second evidentiary hearing. This certiorari appeal follows.

## 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 applicant may have been prejudiced because the findings, conclusion, or decision are affected by an error of law or unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2008); *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007). A ULJ's findings will be viewed in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court will not disturb the ULJ's factual findings when the evidence substantially sustains them. *Id.*

### I.

Relator contends that the ULJ erred by denying his request for an additional evidentiary hearing. If an applicant fails to participate in an evidentiary hearing, the ULJ must hold an additional evidentiary hearing if the applicant demonstrates good cause for failing to participate. Minn. Stat. § 268.105, subd. 2(d) (Supp. 2009). "Good cause" is defined as "a reason that would have prevented a reasonable person acting with due diligence from participating at the evidentiary hearing." *Id.* This court will not reverse a ULJ's decision to deny an additional evidentiary hearing unless the decision constitutes an abuse of discretion. *Skarhus*, 721 N.W.2d at 345.

In his initial letter to the ULJ, relator stated that he was confused about the date of the hearing and cited his pain medication as a potential cause of that confusion. Relator stated that due to his confusion, he did not have his cellular phone turned on at the time of the hearing. In his request for reconsideration, relator asserted that he was available to take the ULJ's call at the time of the hearing, but that his cellular phone was off because he was at home at the time of the hearing; but relator did not indicate that he had any reason to believe the call would be to his home phone as opposed to his cellular phone. The ULJ denied relator's request for an additional hearing, reasoning that "[b]eing confused regarding the date of the hearing is not good cause for failure to participate in the hearing."

We conclude that the ULJ did not abuse his discretion in determining that relator failed to establish good cause for failing to miss the hearing. Relator's original excuse—being confused about the date of the hearing—is not a reason that would have prevented a reasonable person acting with due diligence from participating. Therefore, we conclude that the ULJ acted within his discretion by denying relator's request for an additional evidentiary hearing on this ground.

Because relator failed to earlier raise the argument that he expected the ULJ to call his home number, he may not raise it on appeal. *Cf. Big Lake Ass'n v. St. Louis County Planning Comm'n*, 761 N.W.2d 487, 491 (Minn. 2009) (finding an argument to have been waived in an administrative appeal when the argument was not sufficiently raised in the administrative proceeding). Regardless, relator's argument is unavailing. Relator received a notice from DEED indicating the date and time of the hearing. The notice sent

to relator failed to indicate a contact number, but did provide relator with instructions on how to change his contact number should he wish to do so. Had relator wanted to be contacted at his home number, he could have updated his contact information, according to the notice. Thus, we conclude that relator's argument on this point also fails to demonstrate the good cause necessary to conduct a second evidentiary hearing.

## II.

Relator also argues that the ULJ erred by determining that he was discharged for employment misconduct. An employee who is discharged for misconduct is not eligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008). Whether an employee has engaged in employment misconduct is a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether the particular acts constitute employment misconduct is a question of law reviewed de novo by the appellate court. *Id.*

Employment misconduct includes any intentional, negligent, or indifferent conduct that displays a serious violation of the standards of behavior the employer has a right to expect of the employee. Minn. Stat. § 268.095, subd. 6(a) (2008). Generally, refusing to abide by an employer's reasonable policies and procedures constitutes employment misconduct. *Schmidgall*, 644 N.W.2d at 804.

The ULJ reasoned that relator's second e-mail violated United Healthcare's e-mail policy "primarily because it supported a business that is not affiliated with United Healthcare" and that such a violation constituted employment misconduct. We agree with the ULJ that relator's conduct amounts to employment misconduct. Relator was

warned, both orally and in writing, not to send e-mails that contained information supporting non-United Healthcare business. While relator asserts that he did not read the e-mail policy immediately after he received it, that fact does not excuse his conduct. Relator sent an e-mail to his coworkers, on company time and using his United Healthcare e-mail account, that contained information supporting business that was unrelated to United Healthcare. Because this act was in clear violation of United Healthcare's policies, relator's action constitutes employment misconduct. *See id.* The ULJ did not err by determining that relator was discharged for employment misconduct and is not entitled to unemployment benefits.

**Affirmed.**