

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1788**

Matthew Kinstler,  
Relator,

vs.

St. Peter Food Co-operative Inc.,  
Department of Employment and Economic Development,  
Respondent.

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

Department of Employment and Economic Development  
File No. 22874078-3

Matthew Kinstler, St. Peter, Minnesota (pro se relator)

St. Peter Food Co-operative, Inc., St. Peter, Minnesota (respondent employer)

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

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

## UNPUBLISHED OPINION

**WORKE**, Judge

Relator argues that the unemployment-law judge (ULJ) erred in concluding that he was discharged for employment misconduct and therefore ineligible for unemployment benefits. Relator also argues that he did not receive a fair hearing. We affirm.

### DECISION

#### *Determination of Ineligibility*

Relator Matthew Kinstler challenges the ULJ's decision that he was discharged for misconduct and ineligible for unemployment benefits. When reviewing the decision of a ULJ, this court may affirm the decision, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced. Minn. Stat. § 268.105, subd. 7(d) (2008). Whether an employee committed employment misconduct presents a mixed question of fact and law. *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006). Whether the employee committed a particular act is a question of fact. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). This court reviews the ULJ's factual findings "in the light most favorable to the decision." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether the act committed by the employee constitutes employment misconduct presents a question of law, which we review de novo. *Scheunemann*, 562 N.W.2d at 34.

Relator was discharged from his cashier position at respondent-employer St. Peter Food Co-operative Inc. after twice exhibiting aggressive behavior towards a co-worker. An employee who is discharged for employment misconduct is ineligible for

unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008). Employment misconduct is “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.” *Id.*, subd. 6(a) (2008). An employer has a right to expect an employee to abide by reasonable policies and procedures. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). “[A]n employee’s decision to violate knowingly a reasonable policy of the employer is misconduct.” *Id.* at 806.

Relator argues that he did not engage in misconduct. Relator was discharged following two incidents that occurred when he inquired about a salary increase. On the first occasion, relator asked a human-resources employee about a raise and she told him that he needed to speak to a supervisor. Relator responded by raising his voice and angrily kicking her office door as he exited. Relator was warned that aggressive behavior would not be tolerated. The second incident occurred one week later when relator approached the same human-resources employee about the raise. She again informed relator that she had no information about the raise, and relator responded by pushing a ceramic dish off the counter. The dish shattered, disrupting customers and causing the human-resources employee to feel threatened. Relator claims that he never kicked the office door, raised his voice, or purposefully broke the ceramic dish.

Relator testified similarly before the ULJ, but this testimony was directly refuted by the human-resources employee. She testified that, on the first occasion, relator “raised [his] voice and kick[ed] a door with . . . the back of his heel that made the door slam shut

when he walked out of the office.” Regarding the second incident, she testified that she saw “him pick something up . . . and then he kind of tossed it behind him and [she] heard it smash and break.” The ULJ found relator’s testimony to be “self-serving” and credited the testimony of the human-resources employee. “Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus*, 721 N.W.2d at 345. The ULJ did not clearly err in finding that relator acted aggressively toward a co-worker on two separate occasions, and this finding is sufficiently supported by evidence in the record.

Relator also argues that, even if he engaged in this conduct, it fails to rise to the level of employment misconduct. Relator twice engaged in aggressive behavior that intimidated a co-worker. After the first incident, relator was warned that future acts of aggression would not be tolerated. This was a reasonable standard of conduct that respondent-employer expected its employees to follow. One week later, relator again displayed aggression when frustrated, despite the warning. His aggressive behavior plainly violated respondent-employer’s reasonable expectation of conduct. Accordingly, the ULJ did not err by concluding that relator was terminated for employment misconduct and thus is ineligible for unemployment benefits.

### ***Fair Hearing***

Relator argues that he did not receive a fair hearing. A ULJ conducts a hearing “as an evidence gathering inquiry and not an adversarial proceeding.” Minn. Stat. § 268.105, subd. 1(b) (2008). The ULJ “must ensure that all relevant facts are clearly and fully developed.” *Id.* A hearing generally is considered fair if both parties are afforded

an opportunity to give statements, cross-examine witnesses, and offer and object to exhibits. *See Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007).

Relator claims that his hearing was unfair because respondent-employer presented testimony and false accusations that he had not heard before and was not prepared to address. But relator was allowed an opportunity to cross-examine respondent-employer's witnesses and offer his own explanation of the events leading to his termination, and did so extensively. Relator also accuses the ULJ of being biased, but fails to advance any proof of the ULJ's bias other than issuing an unfavorable decision. Accordingly, relator's arguments are unavailing and the ULJ conducted a fair hearing.

**Affirmed.**