STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1914

Kay Steffl,
Relator,

vs.

City of New Ulm,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed July 13, 2010
Affirmed
Shumaker, Judge

Department of Employment and Economic Development
File No. 22485913-3

Patrick A. Lowther, Somsen, Mueller, Lowther & Franta, P.A., Sleepy Eye, Minnesota (for relator)

Hugh T. Nierengarten, Thomas L. Borgen, Nierengarten & Hippert, Ltd., New Ulm, Minnesota (for respondent employer)

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

Considered and decided by Toussaint, Chief Judge; Lansing, Judge; and Shumaker, Judge.

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 suspended for employment misconduct. Because we find that relator engaged in employment misconduct, we affirm.

FACTS

After the City of New Ulm suspended relator Kay Steffl for 20 days from her job as a maintenance technician in the city's public library, she applied for unemployment benefits. The ULJ determined that she is not eligible for benefits because she was suspended for employment misconduct. Steffl seeks review of that determination.

Steffl's job duties entailed cleaning and maintaining the library, including the office of the library director, Larry Hlavsa. The record shows that, on the morning of April 13, 2009, Steffl and the reference librarian had a discussion about the acquisitions librarian, noting that she was upset and had spent much of her work time writing a letter of complaint. Later that day, while she was cleaning Hlavsa's office, Steffl noticed a letter on the keyboard of Hlavsa's computer and she recognized it by its font as being the acquisitions librarian's complaint letter.

Steffl testified that she merely glanced at the five-page letter but neither read it nor copied any portion of it. She testified that, after cleaning Hlavsa's office, she had a very brief conversation with the reference librarian in which she indicated that she had seen the complaint letter.

The reference librarian testified that Steffl said she had read the entire letter and that Steffl produced a piece of paper on which she had made notes from the letter. The reference librarian also testified that Steffl encouraged her to go and read the letter for herself.

Ultimately Steffl was suspended without pay for reading a private and confidential document without authorization.

D E C I S I O N

Steffl argues that the ULJ relied on untruthful testimony and did not make proper findings concerning credibility. Alternatively, she argues that even if the factual findings of the ULJ were sufficient, the ULJ erroneously concluded that Steffl's conduct constitutes employment misconduct.

> The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:
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> (1) in violation of constitutional provisions;
> (2) in excess of the statutory authority or jurisdiction of the department;
> (3) made upon unlawful procedure;
> (4) affected by other error of law;
> (5) unsupported by substantial evidence in view of the entire record as submitted; or
> (6) arbitrary or capricious.

Minn. Stat. § 268.105, subd. 7(d) (2008); *see Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007) (citing this standard of review). "Whether an employee has engaged in conduct that disqualifies him from unemployment benefits is a

mixed question of fact and law." *Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 204 (Minn. App. 2004), *review denied* (Minn. Mar. 30, 2004). A determination of the ULJ's reasons for a separation "is a factual determination that is to be reviewed in the light most favorable to the decision and may not be disturbed if there is evidence reasonably tending to sustain the finding." *Id.* "But, whether the acts constitute misconduct is a question of law reviewable de novo on appeal." *Id.*

An employee who is "suspended from employment without pay for 30 calendar days or less, as a result of employment misconduct as defined under section 268.095, subdivision 6, is ineligible for unemployment benefits." Minn. Stat. § 268.085, subd. 13(a) (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, simply 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).

Because there is evidence in the record to sustain the ULJ's credibility determinations, we will not disturb those findings or reassess witness credibility. Steffl argues that the ULJ did not make adequate findings as specified by Minn. Stat.

§ 268.105, subd. 1(c), which states that "[w]hen the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1(c) (2008). The ULJ specifically stated that Steffl's co-worker's version of the events was "detailed and it is undisputed that [the co-worker] had no reason to fabricate her account of the events." He went on to explain that "Steffl's denial is self-serving and her assertion that she knew the letter was written by [the acquisitions librarian] because she recognized the type font is not believable." Thus, the ULJ "set out the reason for crediting or discrediting" the testimony with regard to credibility, as required by Minn. Stat. § 268.105, subd. 1(c).

The remaining issue is whether Steffl's actions constituted employment misconduct. The record shows that she read a private letter, told a co-worker about it, and encouraged a co-worker to read it for herself. Steffl's actions were intentional and not inadvertent, and they displayed a serious violation of the standards of behavior her employer had a right reasonably to expect of its employees. Recognizing that maintenance workers necessarily will have access to private offices and to private and confidential materials within those offices, the employer has a right to expect that such workers will neither read nor disclose information contained in those materials. Steffl's actions constituted employment misconduct.

Additionally, we agree with the ULJ that the "single incident" exception does not apply here. *See* Minn. Stat. § 268.095, subd. 6(a) (stating that "a single incident that does not have a significant adverse impact on the employer" is not employment misconduct).

Some isolated incidents of misconduct can be minor, even de minimis, in terms of their effect on the employer. But this incident seriously impairs the trust level the employer has a right to expect of its maintenance workers. *See, e.g., Frank v. Heartland Auto. Servs., Inc.*, 743 N.W.2d 626, 630-31 (Minn. App. 2008) (holding that automobile-service manager's fraudulent billing of customer undermined employer's ability to assign employee tasks necessary to essential functions of job—regardless of amount or frequency of fiduciary failing—and will always constitute a significant adverse impact on employer, who can no longer rely on employee). Because of this breach of basic trust, the employer is placed in the position of having to be concerned about what private, confidential, and proprietary materials may be safely left in private offices. And while it is inappropriate for a maintenance worker to read anything in a private office, it is a further breach of trust for the worker to disclose the contents of what she has read to a co-worker and to encourage the co-worker to read the document for herself. These were serious violations that do not qualify for the "single incident" exception.

Affirmed.