STATE OF MINNESOTA
IN COURT OF APPEALS
A10-229

Derek Schroeder,
Relator,

vs.

Mille Lacs Band of Ojibwe Indians,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed August 17, 2010
Affirmed
Connolly, Judge

Department of Employment and Economic Development
File No. 23239223-3

Derek Schroeder, Pine City, Minnesota (pro se relator)

Mille Lacs Band of Ojibwe Indians, Onamia, Minnesota (respondent)

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

Considered and decided by Lansing, Presiding Judge; Wright, Judge; and Connolly, Judge.

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

CONNOLLY, Judge

Relator challenges the determination of the unemployment-law judge (ULJ) that he was ineligible for unemployment benefits because he was discharged for employment misconduct, arguing that his conduct in bringing a firearm to his place of employment was a good-faith error in judgment and was authorized by statute. Because relator's conduct seriously violated the standards of behavior reasonably expected by his employer, was not a good-faith error in judgment, and was not authorized by statute, we affirm.

FACTS

Relator Derek Schroeder was employed by respondent Mille Lacs Band of Ojibwe Indians, working on a full-time basis as a Gaming Regulatory Authority (GRA) Investigator.[1] Relator also maintained part-time employment as a tribal police officer for the Mille Lacs Tribal Police Department. In his employment as a gaming investigator, relator worked at two casinos, rotating between the Grand Casino Hinckley and the Grand Casino Mille Lacs.

On August 10, 2009, relator brought a handgun to work at the Grand Casino Hinckley (casino). Following his shift as a gaming investigator at the casino, relator had a training exercise involving shooting; all tribal police officers were required to attend and to bring their firearms. Relator did not feel comfortable leaving the gun in his vehicle because it could be stolen, so he brought it inside the casino and left it in a leather

[1] The GRA is a regulatory agency of the tribal government.

duffle bag in his office. Relator told one coworker that he had brought his police equipment, including a firearm, with him that day. He then opened the duffle bag and showed the handgun to the coworker.

The casino had a policy of not allowing firearms on the premises; signs to this effect were posted at each entrance. Further, a GRA employee-conduct policy, which relator signed and acknowledged reading in August 2006, expressly prohibited "[p]ossession of dangerous or unauthorized materials, such as explosives or firearms, in the workplace." Relator had been informed by e-mail in June 2009 that he had the authority of a tribal police officer only when he was on duty with the tribal police, and that he would not be treated in a law-enforcement capacity while working as a gaming investigator.

On August 14, 2009, the GRA fired relator for bringing his gun to the casino. Relator applied for unemployment benefits, and the department of employment and economic development issued a determination of ineligibility. Following relator's appeal and an evidentiary hearing, a ULJ found that relator was discharged for employment misconduct and was therefore ineligible to receive unemployment benefits. Relator requested reconsideration, and a different ULJ made modified findings but agreed that relator was ineligible for unemployment benefits because he was discharged for employment misconduct. This certiorari appeal follows.

D E C I S I O N

This court may affirm a ULJ's decision or remand for further proceedings, or it may reverse or modify the ULJ's decision if the findings, inferences, conclusions, or

decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d) (2008). The ULJ's factual findings are viewed in the light most favorable to the decision being reviewed and will not be disturbed if the evidence substantially sustains them. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). Whether an employee committed a particular act is a question of fact, but whether the act constitutes employment misconduct is a question of law, which we review de novo. *Id.*

An employee who was discharged from employment because of employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008). "[A]ny intentional, negligent, or indifferent conduct, on the job or off the job that displays clearly: (1) a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee; or (2) a substantial lack of concern for the employment" is employment misconduct. *Id.*, subd. 6(a) (Supp. 2009). However, conduct is not employment misconduct if it consists of "good faith errors in judgment if judgment was required." *Id.*, subd. 6(b)(6) (Supp. 2009).

An employer has the right to reasonably expect its employees to abide by its "reasonable policies and requests." *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Thus, "an employee's decision to violate knowingly a reasonable policy of the employer is misconduct." *Id.* at 806. Because an employer "has a clear and substantial interest in maintaining a safe workplace," a policy reasonably aimed at furthering that interest is a reasonable policy that the employer has a right to expect its employees to follow. *See id.* at 807.

Additionally, "[a]n employer has the right to expect its employees not to engage in conduct that seriously endangers people's safety." *Shell v. Host Int'l Corp.*, 513 N.W.2d 15, 18 (Minn. App. 1994); *see also Risk v. Eastside Beverage*, 664 N.W.2d 16, 21 (Minn. App. 2003) (concluding that employee who drove delivery truck while under the influence of alcohol committed misconduct); *Hein v. Gresen Div.*, 552 N.W.2d 41 (Minn. App. 1996) (concluding that employee's off-duty drug use in violation of employer's policy "also constituted misconduct . . . because Hein operated heavy machinery that posed a danger to others if he were under the influence of drugs").

In this case, relator violated his employer's stated policy by bringing a firearm with him to work at the casino. It is undisputed that he was aware of the GRA policy, and the ULJ's finding that relator was aware of the casino's similar policy is unchallenged and substantially sustained by the evidence in the record. *Cf. Riley v. Transport Corp. of Am., Inc.*, 462 N.W.2d 604, 607-08 (Minn. App. 1990) (emphasizing employee's lack of knowledge of unstated policy in finding that policy violation was not misconduct). Further, by bringing a handgun to work at the casino and displaying it, relator created a serious safety risk. The incident therefore amounted to employment misconduct under Minn. Stat. § 268.095, subd. 6(a).

Relator contends, however, that he "should not be punished any further for making this judgment call." In essence, relator urges this court to conclude that the incident falls within the good-faith exception of Minn. Stat. § 268.095, subd. 6(b)(6), which exempts "good faith errors in judgment if judgment was required" from the statutory definition of employment misconduct. We have previously found that an employee made a good-faith

error in judgment when he failed to "perfectly comply with the [employer's] procedures" because he was substituting at a different work assignment, received no instructions from any supervisor, and relied on his coworker's instructions. *Benson v. Iowa Beef Processors*, 348 N.W.2d 394, 397 (Minn. App. 1984).

However, emphasizing that the good-faith exception applies "only in situations when judgment is required," we recently held that judgment was not required when the employee "acted outside the scope of his position." *Marn v. Fairview Pharmacy Servs. LLC*, 756 N.W.2d 117, 122 (Minn. App. 2008), *review denied* (Minn. Dec. 16, 2008). Judgment is not required when an employer's policy covers the specific conduct at issue and leaves no room for discretionary action. Here, relator brought a gun to work in knowing violation of the GRA and casino policies. The GRA policy unambiguously provides that possession of dangerous materials in the workplace, including firearms, is prohibited conduct "that may result in disciplinary action . . . including immediate termination of employment." Although we do not doubt that relator acted in good faith, judgment simply was not required. Thus, the good-faith exception does not apply.

Relator also contends that, because he was a tribal police officer, he was statutorily authorized to bring his gun to the casino despite its and his employer's policies to the contrary. By statute, a private establishment that makes a "reasonable request that firearms not be brought into the establishment" may order a person carrying a firearm to leave, and a person who refuses to leave is guilty of a petty misdemeanor.[2] Minn. Stat.

[2] The casino's signs amounted to a "reasonable request." *See* Minn. Stat. § 624.714, subd. 17(b)(1)(i) (2008).

§ 624.714, subd. 17(a) (2008). "This subdivision does not apply to: (1) an active licensed peace officer; or (2) a security guard acting in the course and scope of employment."[3] *Id.*, subd. 17(g) (2008). By its plain text, the statute creates and defines a petty-misdemeanor trespass. The exemption of peace officers means that (1) the private establishment may not order a peace officer to leave and (2) a peace officer who does not leave when so requested is not guilty of a petty misdemeanor. The statute does *not* create an affirmative right to carry a gun in a private establishment notwithstanding any other rules. Relator may not have been chargeable with petty-misdemeanor trespass, but as a matter of employment law it was employment misconduct to bring the gun to work. The ULJ therefore did not err in finding relator ineligible for unemployment benefits.

Affirmed.

[3] The department appears to concede that relator was a peace officer within the meaning of the statute, which we assume for purposes of this appeal.