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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2100**

Thomas Farr,
Relator,

vs.

Robert B. Hill Co. (Corp.),
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed November 30, 2010
Affirmed
Worke, Judge**

Department of Employment and Economic Development
File No. 22402394-3

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Considered and decided by Klaphake, Presiding Judge; Shumaker, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Relator argues that the unemployment-law judge (ULJ) erred by concluding that he was discharged for employment misconduct and, therefore, is ineligible for unemployment benefits. Relator also argues that the ULJ abused her discretion by denying his request for an additional hearing. We affirm.

DECISION

Determination of Ineligibility

Relator Thomas Farr challenges the ULJ's decision that he was discharged for misconduct and is ineligible for unemployment benefits. When reviewing the decision of a ULJ, we 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 engaged in employment misconduct presents a mixed question of law and fact. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether a particular act constitutes employment misconduct is a question of law, which we review de novo. *Id.* But whether an employee committed a particular act is a question of fact. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We review the ULJ's factual findings "in the light most favorable to the decision," and we "will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Id.* Also, "[c]redibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Id.* at 345.

Relator was employed as a commercial account executive by respondent-employer Robert B. Hill Co. (Corp.) for 14 months prior to his discharge. The ULJ concluded that relator was discharged for employment misconduct. 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 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.” *Id.*, subd. 6(a) (Supp. 2009).

Relator argues that he did not engage in misconduct. Instead, relator contends that he was discharged for poor sales performance and, therefore, remains eligible for unemployment benefits because a discharge for poor performance due to inability or incapacity does not constitute employment misconduct. *See id.*, subd. 6(b)(5) (Supp. 2009). But the ULJ found many instances when relator’s conduct required some sort of corrective action during his 14 months of employment, including: failing to follow employer’s procedures for organizing files, inflating a purported sale profit, failing to submit a business plan outlining his strategy for growing sales despite repeated requests to do so, and failing to utilize employer’s database software in a satisfactory manner. Based on these findings, the ULJ concluded that relator “demonstrated *a pattern* of either negligent or intentional failure to comply with directions and instructions of management so as to display clearly a serious violation” of employer’s reasonable policies. (Emphasis added.) Because relator fails to advance a legitimate explanation for his failure to abide by a myriad of employer’s reasonable expectations, the ULJ did not err by concluding

that relator engaged in employment misconduct and is, therefore, ineligible to receive benefits.

Request for Additional Hearing

Relator also argues that the ULJ abused its discretion by failing to grant his request for an additional hearing, asserting that an affidavit from a former co-worker obtained after the hearing entitled him to an additional evidentiary hearing. A ULJ must grant a request for an additional hearing when new evidence “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.” Minn. Stat. § 268.105, subd. 2(c)(2) (Supp. 2009). We defer to a ULJ’s decision not to hold an additional hearing, and will reverse only for an abuse of discretion. *Skarhus*, 721 N.W.2d at 345.

Relator’s co-worker claimed to have witnessed the conversation when relator was discharged, and asserted that relator was discharged for low sales numbers. The ULJ found that relator failed to demonstrate that evidence submitted at the hearing was false. Relator argues that the ULJ abused her discretion in refusing to grant an additional hearing because the affidavit shows that employer falsely testified about the reason for his discharge. But the ULJ’s initial determination was based upon documentary evidence that relator’s sales were not low, and not solely on employer’s testimony. And the ULJ specifically disfavored relator’s contention that he was discharged for poor sales, determining that: “[Relator’s] testimony [was] not credible. His testimony under oath conflicts with the written statements he provided and with documentation received in[to] evidence.” Moreover, relator conceded during oral arguments that the co-worker

providing the affidavit was also discharged by employer. The affidavit is unlikely to refute actual evidence demonstrating that relator's sales were not low, and the ULJ did not abuse its discretion by denying relator's request for an additional hearing and affirming on reconsideration.

Affirmed.