STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1484

Christopher Kelm,
Relator,

vs.

D & J Printing, Inc. -- Bang Printing,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed May 16, 2011
Affirmed
Huspeni, Judge[*]

Department of Employment and Economic Development
File No. 25078194-3

Christopher Kelm, Brainerd, Minnesota (pro se relator)

D & J Printing, Inc., Brainerd, Minnesota (respondent)

Lee B. Nelson, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent Department of Employment and Economic Development)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Huspeni, Judge.

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[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

HUSPENI, Judge

Relator Christopher Kelm challenges an unemployment-law judge's (ULJ) determination that he is ineligible to receive unemployment benefits because he was discharged for employment misconduct. Because evidence in the record substantiates misconduct by relator and supports the decision of the unemployment-law judge, we affirm.

FACTS

Relator was employed by respondent, a book printer and binder, from June 26, 2000, to April 15, 2010, as a full-time case-in operator on the night shift, from 11:00 p.m. to 7:00 a.m. Prior to the events giving rise to his termination, relator had on several occasions been warned by respondent about his insubordinate behavior in the workplace.

At the beginning of relator's shift on April 14, 2010, relator's supervisor, Josh Franzen, told him that one of relator's regular crew of workers was being removed for that shift from the machine relator operates and replaced with a temporary worker. Relator said, "This is f-----g bulls--t," and walked away from Franzen. Relator believed that having a temporary worker on his crew would adversely affect his production and his evaluations. Franzen and relator then had a heated, loud argument near relator's machine. Franzen called Shelly Eide, the production manager, at her home to notify her of the altercation with relator.

When Eide came in the next morning at 7:00 a.m., she had Franzen bring relator into her office to meet with her and the human-resources manager to discuss the incident

of the previous evening. Eide told relator she intended to issue him a written warning for insubordination and began to explain to him why his behavior toward Franzen the previous evening had been inappropriate. Relator, who said he thought his behavior had been appropriate, disagreed with Eide and argued loudly and heatedly with her. Eide then informed relator that although she had initially intended to issue him a written warning, she had decided, based on his insubordinate behavior with her and the others at the meeting, to suspend him for three days. Relator continued to argue with Eide, and said he wanted to speak with the company's owner. Eide told him she would set up a meeting, and relator went home.

Eide spoke with relator by telephone on the afternoon of April 15, at which time relator told her that he had discovered that the company's owner was out of town. Relator said that he would come into work that night and talk with the owner when the owner returned. Eide told relator he was suspended and could not come into work. The two agreed to meet that afternoon. Before relator arrived, Eide met with her own supervisor, and they decided to terminate relator. When relator arrived for the meeting with Eide, she fired him.

Relator applied for unemployment benefits and then appealed the Minnesota Department of Employment and Economic Development's (DEED) initial determination that he was ineligible to receive unemployment benefits. Following an evidentiary hearing, at which both Eide and the human-resources manager testified that relator's conduct during their meeting with him was insubordinate, argumentative, and aggressive, the unemployment-law judge (ULJ) found that relator was terminated for employment

misconduct because he was insubordinate to his production supervisor on the evening of April 14 and to his production manager on April 15. This certiorari appeal followed.

D E C I S I O N

This court may affirm or reverse or modify a ULJ's decision if the substantial rights of a petitioner may have been prejudiced because, among other things, the decision is affected by an error of law or unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2008). Minnesota courts have defined substantial evidence as: "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008). Employment misconduct means "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) (2010). But employment misconduct does not include the applicant's "inefficiency or inadvertence; . . . simple unsatisfactory conduct; . . . conduct an average reasonable employee would have engaged in under the circumstances; . . . [or] good faith errors in judgment if judgment was required." *Id*., subd. 6(b)(2)-(4), (6) (2010). "If the conduct for which the applicant was discharged involved only a single incident, that is an important fact that must be considered in

deciding whether the conduct rises to the level of employment misconduct . . . ." *Id.*, subd. 6(d) (2010).

Whether an employee committed employment misconduct is a mixed question of fact and law. *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 an appellate court reviews de novo. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). Whether the employee committed the particular act is a question of fact. *Id.* We review the ULJ's factual findings "in the light most favorable to the decision," and we defer to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

The ULJ found that relator was insubordinate to his supervisor on the evening of April 14, 2010, and insubordinate to his supervisor, the production manager, and the human-resources manager on April 15. The ULJ credited the testimony of Eide and the human-resources manager concerning relator's conduct at the April 15 meeting. The record supports the ULJ's findings and credibility determination. Relator acknowledged at the hearing that he was argumentative and loud with his supervisors.

Respondent's employee handbook provides, in the Employee Conduct/Disciplinary Action section, that in the event "an employee fails to meet or has difficulty meeting [respondent's] conduct and/or performance expectations, [respondent] will take appropriate corrective action as determined by management . . . up to and including immediate termination." The ULJ properly concluded that relator's actions

constituted a serious violation of the standards of behavior that respondent has a right to reasonably expect of him.

Relator argues that the confrontation between himself and Josh Franzen on April 14 was not relator's fault because Franzen pursued him and provoked him, and that the ULJ overlooked the fact that Franzen was responsible for the confrontation between the two men. Relator challenges the ULJ's credibility determinations, to which we defer. Relator also argues that the suspension he received at the April 15 meeting was not legitimate because he was not given a written notice of suspension and because he requested to meet with respondent's owner before beginning the suspension. But there is no evidence of a company policy requiring either that suspensions be written or that requesting a meeting with respondent's owner tolls the implementation of disciplinary action. Relator contends that Eide did not tell him on the telephone on the afternoon of April 15 that he was suspended; Eide testified, however, that she did so inform relator, and the ULJ credited Eide's testimony. Relator also contends that the discipline he received is logically inconsistent with the discipline his brother (who works for respondent) received for walking away from his machine a week before relator's termination. But relator has not demonstrated how, or whether, respondent's alleged treatment of his brother is relevant to this appeal; moreover, relator did not raise this issue before the ULJ, and we therefore do not consider it. *Imprint Techs., Inc. v. Comm'r of Econ. Sec.*, 535 N.W.2d 372, 378-79 (Minn. App. 1995).

Relator's conduct on April 14 and 15 demonstrated a disregard for the standards of behavior that respondent had a right to reasonably expect of him. The record does not

support a conclusion that relator's conduct was inadvertent, simply unsatisfactory, or a good-faith error in judgment. The ULJ properly concluded that relator was discharged for employment misconduct and is therefore ineligible to receive unemployment benefits.

Affirmed.