STATE OF MINNESOTA
IN COURT OF APPEALS
A11-490

Barry Sharp,
Relator,

vs.

Hayloft Property Management Co.,
Respondent,

Department of Employment
and Economic Development,
Respondent.

Filed January 3, 2012
Reversed
Hudson, Judge

Department of Employment
and Economic Development
File No. 25962426-3

Annette M. Margarit, Matthew J. Schaap, Severson, Sheldon, Dougherty & Molenda, P.A., Apple Valley, Minnesota (for relator)

Hayloft Property Management Co., Tea, South Dakota (respondent)

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

Considered and decided by Peterson, Presiding Judge; Hudson, Judge; and Harten, Judge.*

* 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

HUDSON, Judge

Relator challenges the determination by an unemployment-law judge (ULJ) that he is ineligible for unemployment-insurance benefits. Because relator made a good-faith error in judgment where judgment was required, we reverse.

FACTS

Relator Barry Sharp began working as a maintenance technician at respondent Hayloft Property Management Company (Hayloft) on September 11, 2007. Maintenance workers at Hayloft used golf carts to travel among job sites, including in and out of an underground parking garage at the apartment complex where relator worked. A sign on the outside of the garage cautioned drivers that the automatic garage door was timed for one vehicle at a time and closed after each vehicle. Relator had read the sign and was familiar with it. Hayloft provided employees no other policy or rule limiting vehicle or golf cart travel into the garage.

On the afternoon of August 20, 2009, relator used a golf cart to remove garbage from the underground garage. Relator returned to the garage on the golf cart. A co-worker was driving a golf cart in front of relator into the parking garage. As relator approached the garage, the garage door began to close. Relator pushed his remote garage door opener to stop the door's descent, but the door continued to close. Relator did not slow down or attempt to back up. He ducked as he proceeded under the closing door, and the door stopped on the roll bar on top of the golf cart, damaging the cart. The garage

door was also dented. Relator and another co-worker repaired the door in less than an hour. Hayloft discharged relator that afternoon.

Relator applied for unemployment-insurance benefits and the Minnesota Department of Employment and Economic Development (DEED) determined he was ineligible. Relator challenged the determination, and, at a hearing, testified that other maintenance workers and two former supervisors routinely drove golf carts one after another into the garage without letting the door close after each cart. In addition, relator testified that his interpretation of "vehicle" on the garage warning sign referred to resident vehicles, not maintenance golf carts. He had not received training related to the cautionary sign on the garage door nor did Hayloft provide relator with a written procedure. Additionally, Hayloft had not previously disciplined relator.

The ULJ affirmed the denial of benefits. The ULJ found that relator was discharged from Hayloft for his negligence in driving an employer golf cart under a lowering garage door, which the ULJ determined constituted employment misconduct under Minn. Stat. § 268.095, subd. 4(1) (2010). The ULJ stated that relator's testimony was not credible, pointing to relator's contentions that the garage sign's reference to vehicles referred only to resident vehicles and that the garage door's closure occurred because the door's laser sensor malfunctioned. The ULJ also determined that relator knew proper procedure regarding operation of the garage door. Additionally, the ULJ stated that relator "intentionally drove the [golf cart] with his body exposed to possible severe injury or death should the garage door hit him." The ULJ further determined that relator's conduct constituted employment misconduct because it revealed substantial and

reckless disregard for his safety and was a serious violation of Hayloft's reasonable expectations of an employee.

Relator requested reconsideration, arguing that the ULJ's determination was based on erroneous fact findings unsupported by the record, was contrary to Minnesota law, and was not misconduct because the incident was the result of relator's inadvertence, conduct an average reasonable employee would have engaged in, and a good-faith error in judgment. The ULJ denied relator's motion for reconsideration, stating that the findings of fact supported the decision and that the employer's testimony was more plausible than relator's. The ULJ did not address the three statutory exceptions to misconduct argued by relator.

This certiorari appeal follows.

D E C I S I O N

Relator argues that the ULJ's factual findings and credibility determinations are not supported by the evidence. Relator also argues that his conduct did not satisfy the statutory definition of misconduct, and, in the alternative, that his conduct did not rise to the level of misconduct because it was inadvertent; what an average, reasonable employee would have done; and a good-faith error in judgment. Because we agree that the relator's conduct was a good-faith error in judgment where judgment was required, we need not reach relator's other arguments.

This court reviews a ULJ's decision to determine whether substantial rights were prejudiced because the findings, inferences, conclusion, or decision are unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2010). Factual findings are

viewed 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). Whether the act committed by the employee constitutes employment misconduct is a question of law, which we review de novo. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997).

An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1). 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). The statute excludes from misconduct an employee's "conduct that was a consequence of . . . inadvertence," "conduct an average reasonable employee would have engaged in under the circumstances," and "good faith errors in judgment if judgment was required." *Id.*, subd. 6(b) (2), (4), (6) (2010).

Relator argues that the good-faith-error exception applies because the act of driving requires split-second decision making. DEED argues that, by driving into the garage, relator violated a company "directive," which constituted misconduct. To begin the analysis for this statutory exception, we ask: was judgment required? When an employee knows his conduct is prohibited by company policy, no judgment is required. *Potter v. N. Empire Pizza, Inc.*, ___ N.W.2d ___, ___, 2011 WL 3903200, at *5 (Minn. App. Sept. 6, 2011), *review denied* (Minn. Nov. 15, 2011). If no judgment is required, the exception does not apply.

The ULJ determined that relator understood that proper procedure required him to wait for the garage door to close and reopen before entering the garage. But procedure does not constitute a policy. Here, it is undisputed that the only communication to relator regarding this procedure was the cautionary sign on the garage, which we conclude was a warning rather than a policy. Hayloft did not provide relator anything in writing regarding the garage procedure, and the record reveals no indication that Hayloft trained its employees on the procedure. Additionally, it is undisputed that driving a golf cart into the garage was among relator's job duties, and Hayloft issued employees a garage-door opener to do so. Because Hayloft had no policy regarding relator's conduct and entering the garage on a golf cart was among relator's job duties, we conclude that judgment was required in this instance. Therefore, Hayloft's job expectations of relator required the exercise of judgment for the conduct at issue.

Next, we ask: did relator commit an error of judgment made in good faith? Good faith is defined as a state of mind that is honest and absent of an intent to defraud. *Black's Law Dictionary* 762 (9th ed. 2009). The record demonstrates that Hayloft employed relator for nearly four years with no previous discipline. It is undisputed that relator and Hayloft considered the incident an accident, which indicates no intent to harm or defraud Hayloft. Additionally, the record shows that the parties did not dispute that Hayloft issued employees garage door openers, that other employees and previous supervisors had engaged repeatedly in the same conduct as relator, that the incident occurred quickly, and that supervisors who had previously observed relator engage in such conduct had not told relator to wait for the garage door to close and reopen—all

factors that could lead to relator exercising his good-faith judgment, however erroneous. Based on these undisputed facts, we conclude any error in judgment made by relator was made in good faith as a matter of law, which satisfies this statutory exception to misconduct. *See Dourney v. CMAK Corp.*, 796 N.W.2d 537, 540 (Minn. App. 2011) (holding that, by satisfying definition of statutory exception, conduct was not employment misconduct). Therefore, relator is not disqualified from receiving unemployment-insurance benefits.

Reversed.