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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-1017**

Albert Beety,  
Relator,

vs.

Best Buy Enterprises Services, Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed February 24, 2014  
Affirmed  
Kirk, Judge**

Department of Employment and Economic Development  
File No. 30785741-3

Marshall H. Tanick, Brian R. Christiansen, Hellmuth & Johnson, PLLC, Edina,  
Minnesota (for relator)

William R. Skallerud, Associate General Counsel, Best Buy Enterprises Services, Inc.,  
Richfield, Minnesota (for respondent Best Buy Enterprises Services, Inc.)

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

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Kirk,  
Judge.

## **UNPUBLISHED OPINION**

**KIRK**, Judge

Relator challenges the determination of the unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he was discharged for employment misconduct. We affirm.

### **FACTS**

Relator Albert Beety worked for respondent Best Buy Enterprises Services, Inc., from May 1994 until he was discharged on September 11, 2012. After Beety graduated from law school and obtained a license to practice law in Minnesota, but before he started working for Best Buy, he moved to Illinois to work for a corporation. He remained in Illinois for five or six years but never obtained a license to practice law in Illinois. Beety let his Minnesota law license lapse while he lived in Illinois; he has never reactivated it.

In May 1994, Best Buy hired Beety to serve as a corporate counsel in its legal department in Minnesota. At the beginning of his employment with Best Buy, Beety negotiated and drafted real estate leases and contracts. Beety later transitioned to the corporate side of the legal department and negotiated contracts, advised business groups, and supervised attorneys. During the four or five years prior to his discharge, Beety supervised and coordinated the replacement of defective carpeting in Best Buy stores. Beety consulted with outside counsel regarding the carpeting issues, and he never appeared in court on behalf of Best Buy. At the time Beety was discharged, his job title was senior corporate counsel and his annual salary was \$162,500.

In August 2012, Beety's supervisor, vice president and associate general counsel Thomas Harris, learned from another employee in the legal department that Beety did not have an active license to practice law. As a result of that information, Best Buy initiated an investigation into Beety's licensure status. Sue Niemi, an employee relations investigator, contacted Beety by phone. During their conversation, Niemi asked Beety several times if he was currently licensed to practice law. Beety responded that he was not comfortable answering her question at that time. Later that day, Harris sent Beety a letter stating that his refusal to answer Niemi's questions "raises further serious issues" and "may itself result in job action." Harris informed Beety that he was suspended from Best Buy.

The following day, Beety sent a letter to Niemi. He stated that he had not refused to cooperate with the investigation during the phone call; instead, he did not want to answer her questions before he fully understood the situation. Beety acknowledged that he did not have an active license to practice law, but he asserted that his job duties at Best Buy were not legal in nature and that Harris knew about his licensure status. On September 11, Best Buy discharged Beety for failing to maintain an active license to practice law and failure to cooperate with the investigation.

Beety applied for unemployment benefits, and a Minnesota Department of Employment and Economic Development clerk determined that Beety was ineligible for unemployment benefits. Beety appealed the ineligibility determination.

In February 2013, a ULJ held a telephonic evidentiary hearing. Following the hearing, the ULJ determined that Beety was ineligible for unemployment benefits. Beety

requested reconsideration, and the ULJ affirmed its decision. This certiorari appeal follows.

## D E C I S I O N

When reviewing a ULJ's eligibility decision, this court may affirm, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are affected by an error of law or are unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2012). We review the ULJ's factual findings in the light most favorable to the decision and defer to the ULJ's credibility determinations. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). “[T]his court will not disturb the ULJ's factual findings when the evidence substantially sustains them.” *Id.*

An employee who was discharged is eligible for unemployment benefits unless the discharge was for employment misconduct. Minn. Stat. § 268.095, subd. 4(1) (2012). “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) (2012). “Whether an employee committed employment misconduct is a mixed question of fact and law.” *Peterson*, 753 N.W.2d at 774. Whether the employee committed the act is a fact question. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But whether the employee's

act constitutes employment misconduct is a question of law, which we review de novo. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011).

The ULJ found by a preponderance of the evidence that Beety violated Best Buy's reasonable expectation that an employee hired as a corporate counsel would not engage in the unauthorized practice of law, and that the violation was serious because of the long period of time for which it continued. We conclude that there is substantial evidence in the record to support this determination. The record establishes that Best Buy hired Beety to perform work as a licensed attorney in the role of corporate counsel in the legal department and paid him for that position. In addition, Best Buy assigned Beety work as though he was a licensed attorney and he actually performed legal work during approximately 18 years of employment at Best Buy. Beety's own testimony, Harris's testimony, and Beety's performance evaluations establish that during the course of his employment, Beety negotiated contracts, drafted real estate leases, advised Best Buy on legal matters, and supervised other attorneys in the legal department.

Beety contends that the record does not support the ULJ's determination that he engaged in the unauthorized practice of law. He first argues that he was not engaged in activities that would clearly require him to have an active license to practice law. But there is substantial evidence in the record that Beety engaged in the practice of law by advising his client, Best Buy, on legal matters. In addition, the ULJ specifically found that Beety's claim that he did not perform legal work was not credible, and we defer to the ULJ's credibility findings. *See Skarhus*, 721 N.W.2d at 344.

Beety also argues that his supervisors and coworkers were aware that he did not have a license to practice law. The ULJ specifically rejected this argument, finding that in light of all of the evidence it was more likely than not that Beety's supervisors did not know that Beety's license was suspended. The ULJ reasoned that Beety's conduct in response to Niemi's questions made it doubtful that Harris was aware that Beety did not have a license, because if Harris had known, then Beety had no reason to be so guarded in answering the questions.

This finding is supported by substantial evidence in the record. Harris testified that he found out that Beety did not have an active license to practice law in August 2012 and, as soon as he found out, Best Buy initiated an investigation. Harris testified that he never discussed Beety's lack of license with Beety, and he could not recall the specific occasions that Beety claimed he discussed it with him. Harris did testify that another employee who was having issues with her own license to practice law questioned him about Beety's license, stating that the employee "told me that she thought that [Beety was] not licensed and . . . I think that was you know shortly before, during the controversy when she, when her fees became due, and I said are you sure, where did you get that, and it was just—didn't follow up on." When the ULJ asked Harris why he did not follow up on it, Harris stated: "It just didn't even register. We were just having a conversation, it wasn't even about [Beety], it was about her. And I just was following up on that and it was only, subsequently when this whole thing blew up that I recalled it." Harris also testified that he believed that the attorney who hired Beety, who no longer worked at Best Buy, told Niemi during the investigation that he was not aware that Beety

did not have a license. Although that statement was hearsay, a ULJ may rely on hearsay evidence “if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs.” Minn. R. 3310.2922 (2013).

In contrast, the only evidence in the record that Beety’s supervisors during the course of his employment at Best Buy knew that he did not have a license was his own testimony. However, Beety was unable to recall if he specifically discussed his lack of licensure with the attorney who hired him; instead, he testified that he assumed that that attorney knew he was not licensed. Likewise, Beety testified that he had discussed his lack of licensure with Harris, but his recollection of the occasions they discussed it was vague. Moreover, the ULJ specifically explained why she discredited Beety’s assertion that his supervisors knew about his lack of licensure, and we defer to the ULJ’s credibility determinations. *See* Minn. Stat. § 268.105, subd. 1(c) (2012) (“When 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.”); *see also Skarhus*, 721 N.W.2d at 344.

Beety further argues that because his supervisors were aware of his lack of active licensure, they acquiesced to his continued employment. *See Worthington Tractor Salvage, Inc. v. Miller*, 346 N.W.2d 168, 171 (Minn. App. 1984) (stating that employer’s “acquiescence and granting of extensions to the [employee] makes it difficult for this [c]ourt to hold that the [employee] ‘willfully and wantonly’ disregarded the [employer’s] standards and expectations”). However, *Worthington Tractor* is distinguishable from this

case because it involved a previous version of the unemployment statute and there is no evidence that Best Buy affirmatively consented to Beety's lack of a license to practice law. In fact, there is substantial evidence in the record to support the ULJ's determination that Beety's supervisor did not know that Beety did not have a license to practice law.

Finally, Beety contends that the ULJ did not have the authority to determine that Beety engaged in the unauthorized practice of law in violation of Minn. Stat. § 481.02 (2012). But the ULJ was entitled to determine if Beety practiced law without a license in considering whether he violated Best Buy's reasonable expectation that its employee will comply with the law. *See, e.g., Markel v. City of Circle Pines*, 479 N.W.2d 382, 385 (Minn. 1992) (determining that employee committed misconduct when he lost his driver's license after he was convicted of driving while under the influence). Moreover, the ULJ's ineligibility decision is only determinative in the unemployment-benefits context, and does not determine Beety's civil liability in violating the statute. *See* Minn. Stat. § 268.105, subd. 5a (2012) (providing that ULJ's findings, decision, or order may not be held conclusive or binding or used as evidence in any other forum).

Accordingly, we conclude that the ULJ did not err by determining that Beety is ineligible for unemployment benefits because he was discharged for misconduct.

**Affirmed.**