STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1107

Kyle Henry Latzke,
Relator,

vs.

Silgan Container Manufacturing Corporation,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed March 3, 2014
Affirmed
Larkin, Judge

Department of Employment and Economic Development
File No. 30961257-3

Kyle H. Latzke, Gaylord, Minnesota (pro se relator)

Silgan Container Manufacturing Corporation, c/o TALX UCM Services, Inc., St. Louis, Missouri (respondent)

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

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

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

LARKIN, Judge

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

FACTS

Relator Kyle Henry Latzke began working for Silgan Container Manufacturing Corporation in March 2006. He was employed full-time as a press mechanic until February 18, 2013, when his employment was terminated. Latzke established an unemployment-benefits account with respondent Department of Employment and Economic Development (DEED). DEED issued a determination of ineligibility on March 22, 2013. Latzke appealed, and a telephonic hearing was held before a ULJ. Latzke was represented by an attorney at the hearing. His employer did not participate.

On April 15, 2013, the ULJ issued an order concluding that Latzke was discharged for employment misconduct and is therefore ineligible for unemployment benefits. Latzke requested reconsideration, and the ULJ affirmed the decision. This certiorari appeal follows.

D E C I S I O N

This court may reverse or modify a ULJ's decision "if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision" are "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d)(5) (2012). Substantial evidence is "such

relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Minneapolis Van & Warehouse Co. v. St. Paul Terminal Warehouse Co.*, 288 Minn. 294, 299, 180 N.W.2d 175, 178 (1970) (quotation omitted).

The purpose of chapter 268 is to assist those who are unemployed through no fault of their own. Minn. Stat. § 268.03, subd. 1 (2012). The chapter is remedial in nature and must be applied in favor of awarding benefits. Minn. Stat. § 268.031, subd. 2 (2012). There is no burden of proof in unemployment-insurance proceedings. Minn. Stat. § 268.069, subd. 2 (2012). There is no equitable denial or allowance of benefits. Minn. Stat. § 268.069, subd. 3 (2012).

An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2012). 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) (2012).

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 we review de novo. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). Whether the employee committed the particular act, however, is a question of fact. *Id.* We review the ULJ's factual findings "in the light most favorable to the

decision" and 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 during Latzke's shift on February 6-7, 2013, (1) Latzke watched a DVD in his supervisor's office after previously having been told not to do so, (2) Latzke refused to return to his supervisor's office to discuss the incident, and (3) Latzke left work three hours before his shift ended, without permission, despite warnings from his supervisor that he would be disciplined if he left the plant. The ULJ also found that Latzke was familiar with his employer's policy that prohibited workers from "leaving the plant during work hours without permission" and that "Latzke did not have a compelling reason for his insubordinate conduct." The ULJ concluded that Latzke's "insubordination and violation of work rules" constitutes employment misconduct.

Latzke does not dispute the ULJ's findings that his supervisor asked him not to watch DVDs in the supervisor's office, asked him to return to the office to discuss the incident, or that Latzke refused to comply with either request. And Latzke does not dispute that he left the plant without his supervisor's permission before the end of his scheduled shift. For the reasons that follow, the ULJ did not err in concluding that Latzke's behavior constitutes employment misconduct.

"As a general rule, refusing to abide by an employer's reasonable policies and requests amounts to disqualifying misconduct." *Schmidgall*, 644 N.W.2d at 804. Latzke refused to comply with his supervisor's reasonable requests that he not watch a DVD in the supervisor's office and that he return to the office to discuss the incident. The ULJ

correctly reasoned that "Latzke knew or should have known to comply with his supervisor's request" because he had previously received a written warning for insubordination in 2010. Moreover, an employer has a right to expect its employees to work when scheduled. *Smith v. Am. Indian Chem. Dependency Diversion Project*, 343 N.W.2d 43, 45 (Minn. App. 1984). After refusing to comply with his employer's reasonable requests, Latzke left the plant without permission three hours before his shift was scheduled to end, in violation of his employer's policy. Taken as a whole, Latzke's conduct constitutes "a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee" and demonstrates "a substantial lack of concern for the employment." Minn. Stat § 268.095, subd. 6(a)(1), (a)(2). *See Drellack v. Inter-Cnty. Cmty. Council, Inc.*, 366 N.W.2d 671, 674 (Minn. App. 1985) ("[An employee's behavior] may be considered as a whole in determining the propriety of her [or his] discharge and her [or his] qualification for unemployment compensation benefits.").

On appeal, Latzke largely faults his employer for not presenting additional evidence that he claims would have benefitted him. But Latzke participated in the hearing before the ULJ—with legal counsel—and had the opportunity to present favorable information. The fact that Latzke's employer did not participate in the hearing or submit evidence beyond its termination letter and company policy is of no avail to Latzke, because "[t]he commissioner has the responsibility for the proper payment of unemployment benefits regardless of the level of interest or participation by . . . an employer in any determination or appeal." Minn. Stat. § 268.069, subd. 2.

In sum, we discern no basis to reverse the ULJ's ineligibility determination.

Affirmed.