STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1507

Daniel Ray Hernandez,
Relator,

vs.

Mydatt Services, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent

Filed June 2, 2014
Affirmed
Ross, Judge

Department of Employment and Economic Development
File No. 31211334-3

Peter B. Knapp, Janelle Frederick (certified student attorney), William Mitchell Law Clinic, St. Paul, Minnesota (for relator)

Mydatt Services, Inc., Nashville, Tennessee, (respondent employer)

Lee B. Nelson, Christine Hinrichs, St. Paul, Minnesota (for respondent department)

Considered and decided by Hooten, Presiding Judge; Ross, Judge; and Bjorkman, Judge.

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

ROSS, Judge

Mydatt Services, Inc., discharged Daniel Hernandez after he asked another employee to conduct video surveillance of a subordinate, violating Mydatt employment policy. The Minnesota Department of Employment and Economic Development initially awarded Hernandez unemployment benefits, but Mydatt successfully appealed administratively to an unemployment law judge. Because Mydatt terminated Hernandez's employment because of employment misconduct, we affirm.

FACTS

Mydatt Services, Inc., which provides security, cleaning, and related services, hired Daniel Hernandez in June 2010. Mydatt discharged Hernandez in May 2013. Hernandez sought unemployment benefits, and the department of employment and economic development granted them. Mydatt appealed to an unemployment law judge (ULJ), who heard evidence describing the following events.

After Mydatt hired Hernandez, he became a shift supervisor responsible for managing service and cleaning employees working in various locations in downtown Minneapolis. Mydatt had installed a number of security cameras throughout downtown. But in 2012 the National Labor Relations Board ruled that Mydatt cannot use its equipment to monitor its employees engaging in union-related activities. Mydatt instituted a broader policy against using the video cameras to monitor generally, and it informed Hernandez that he and other supervisors should never ask employees

conducting surveillance to watch employees. It warned Hernandez that violating the policy would likely result in discharge.

One day in May 2013, Hernandez tried unsuccessfully to contact by radio an employee absent from her post. He searched for her for 35 minutes before she eventually returned to her post. Hernandez went to the office and asked another employee for video footage to determine whether the missing employee had been performing her assigned duties while he was searching for her. Hernandez knew that he had been told not to use cameras for this purpose, but he claimed that he inferred that he had permission because he had recently seen his own supervisor request video footage to locate an employee. Hernandez's supervisor, John Heinrich, discharged Hernandez three days later, citing three reasons: Hernandez purchased alcohol from an employee, he asked an employee whether she liked him, and he requested camera footage for employee surveillance.

The ULJ found that Mydatt had instructed Hernandez "not to request camera coverage to look for crew members . . . and that [a] violation would result in . . . termination." She determined that Mydatt discharged Hernandez for misconduct because Hernandez "violated the direction and instruction of Heinrich." The ULJ affirmed her decision without a new hearing after Hernandez requested reconsideration.

Hernandez appeals by writ of certiorari.

D E C I S I O N

Hernandez argues that the ULJ erred by deeming him ineligible for unemployment benefits. An employee discharged for misconduct is ineligible for benefits. Minn. Stat. § 268.095, subd. 4(1) (2012). Whether an employee committed employment misconduct

is a mixed question of law and fact. *Dourney v. CMAK Corp.*, 796 N.W.2d 537, 539 (Minn. App. 2011). We view facts in the light most favorable to the ULJ's decision and will not disturb a finding if supported by substantial evidence. *Id.* Whether the facts constitute misconduct, however, is a question of law that we review de novo. *Id.*

The record supports the department's position that Hernandez ignored a reasonable request from his employer and was therefore ineligible to receive benefits. When an employee refuses to follow an employer's reasonable policies, he commits misconduct. *Bray v. Dogs & Cats Ltd.*, 679 N.W.2d 182, 184 (Minn. App. 2004). Hernandez knew that Mydatt had directed supervisors not to use camera surveillance to monitor employees and that failure to follow this directive could cost him his job. Hernandez admitted that he knew he "might be in trouble" if he looked at camera footage of employees, but he maintains that his actions were merely a good faith error in judgment. His argument is not persuasive.

We reject Hernandez's assertion that his request for security footage was merely a good faith error in judgment because he had a legitimate business purpose and had seen one of his supervisors doing the same thing. Although Hernandez is correct that a "good faith error[] in judgment" is not misconduct, the good faith exception applies only if the employee's judgment is actually required. Minn. Stat. § 268.095, subd. 6(b)(6). When a directive is clear, no judgment is required. *See Potter v. N. Empire Pizza, Inc.*, 805 N.W.2d 872, 877 (Minn. App. 2011), *review denied* (Minn. Nov. 15, 2011). Heinrich gave a clear directive, informing "the entire management team not to request camera

coverage for the crew." Hernandez's judgment was unnecessary because the absolute directive left no room for his discretion.

And Hernandez's second excuse, that his own supervisor had also requested video footage, does not lead us to reverse for two reasons. The first reason is that a coworker's conduct is irrelevant. *See Dean v. Allied Aviation Fueling Co.*, 381 N.W.2d 80, 83 (Minn. App. 1986) ("Violation of an employer's rules by other employees is not a valid defense to . . . misconduct."). The second reason is that Hernandez's actions differ materially from his supervisor's. Hernandez requested footage to determine where an employee, whom he had already found at her post, had been. The supervisor he points to was instead attempting to locate an employee who was then still missing.

The ULJ had a sufficient factual basis to decide that Hernandez failed to comply with a reasonable directive of his employer, and Hernandez cites no adequate legal excuse to avoid the misconduct finding.

Affirmed.