STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0660

Aries Williams,
Relator,

vs.

ME Savage Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed December 13, 2021
Affirmed
Slieter, Judge

Department of Employment and Economic Development
File No. 41264896-3

Aries Williams, Eagan, Minnesota (*pro se* relator)

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

ME Savage Inc., Savage, Minnesota (respondent employer)

Considered and decided by Smith, Tracy M., Presiding Judge; Slieter, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Relator challenges an unemployment-law judge's (ULJ) determination that she is ineligible for unemployment benefits because she was terminated for employment

misconduct. Relator argues that she did not engage in employment misconduct because her absences were authorized and that the ULJ improperly declined to issue her requested subpoenas. Because the record supports the ULJ's determination that relator was discharged for unauthorized absences constituting employment misconduct, and the ULJ did not abuse his discretion by refusing to issue subpoenas, we affirm.

FACTS

Respondent ME Savage Inc. (Massage Envy) owns and operates several massage clinics in Minnesota. It hired relator Aries Williams in mid-November 2019 to work at a clinic scheduled to open in December 2019 in Eagan. Massage Envy's new employee training has both online and in-person components. Because the Eagan clinic was not yet open, the Savage clinic conducted Williams's hiring and in-person training. With Williams's input and based on her availability, the Savage clinic manager created Williams's in-person training schedule. The Savage clinic manager also reviewed with Williams a copy of Massage Envy's company policies which included a requirement that employees provide a doctor's note to return to work after missing two consecutive workdays.

Williams completed the online training and three in-person training shifts at the Savage location on November 26, 27, and 29. But Massage Envy discharged Williams after she missed in-person training shifts on December 2, 3, and 4 without providing a doctor's note.

Williams applied for unemployment benefits, and the Department of Employment and Economic Development determined she was ineligible. Williams appealed this

determination. Following an evidentiary hearing, the ULJ concluded Williams had been discharged for employment misconduct and affirmed this conclusion upon Williams's request for reconsideration. This certiorari appeal follows.

DECISION

We reverse or modify a ULJ's decision determining eligibility for unemployment benefits only "if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are . . . (5) unsupported by substantial evidence in view of the hearing record as submitted; or (6) arbitrary or capricious." Minn. Stat. § 268.105, subd. 7(d) (2020). If the credibility of a witness "has a significant effect on the outcome of a decision, the [ULJ] must set out the reason for crediting or discrediting that testimony." *Id.*, subd. 1a(a) (2020). This credibility determination is "the exclusive province of the ULJ and will not be disturbed on appeal." *Bangtson v. Allina Med. Grp.*, 766 N.W.2d 328, 332 (Minn. App. 2009).

I. The ULJ did not err in determining Williams was ineligible for unemployment benefits.

Williams claims the ULJ erred because, she argues, "[n]o misconduct occurred." Because the record supports the factual findings of the ULJ leading to his conclusion that Williams committed serious employment misconduct, we affirm.

"Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law." *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted). We review whether a particular act constitutes disqualifying misconduct *de novo*. *Id.* We review whether the applicant

engaged in the conduct "in the light most favorable to the decision and should not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them." *Id.* (quotation omitted).

An unemployment benefits claimant is ineligible for benefits if "the applicant was discharged because of employment misconduct." Minn. Stat. § 268.095, subd. 4(1) (2020). "Employment misconduct means any intentional, negligent, or indifferent conduct, on the job or off the job, that is a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee." *Id.*, subd. 6(a) (2020). An employer generally "has a right to expect an employee to work when scheduled." *Del Dee Foods, Inc. v. Miller*, 390 N.W.2d 415, 417 (Minn. App. 1986) (quotation omitted). "As a general rule, refusing to abide by an employer's reasonable policies and requests amounts to disqualifying misconduct." *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

The ULJ heard testimony from the Savage clinic manager and Williams. He found the clinic manager's testimony "credible because it was clear, detailed, plausible, and supported in part by contemporaneous documentation." He found Williams's testimony not credible because it "was scattered, inconsistent, and regularly included implausible information." On reconsideration, the ULJ concluded Williams "provide[d] no new information or argument requiring that this credibility finding be altered." We do not disturb the ULJ's credibility determination. *Bangtson*, 766 N.W2d at 332.

The clinic manager testified that she created an in-person training schedule with Williams's input and understanding and provided Williams a printed copy of the schedule,

and that Williams did not indicate she had other employment obligations or conflicts with the schedule. The clinic manager also testified that, other than stating that they were not health-related, Williams provided no explanation for her absences.

Williams testified that she told the assistant manager who hired her that she had another job and she was "given the opportunity not to even come in at all, but to wait until [she] start[ed] at Eagan, until that location was actually physically open to do anything." Williams testified that she understood she was hired for the Eagan clinic and "didn't think [she] would have to drive in the winter all the way to Savage."

Based on the clinic manager's credible testimony, the ULJ found that Williams and the clinic manager together created a schedule of training shifts at the Savage clinic and that Massage Envy discharged Williams "because she missed three days of work in the first few weeks of employment without a good reason." The ULJ further found that Williams missed these shifts "because she did not want to work at the Savage location," as evidenced by her complaints during testimony about having to work in Savage and not because the shifts conflicted with another job or were optional. Based on these findings, the ULJ concluded that Williams's absences were "a serious violation of the standards of behavior the employer ha[d] a right to reasonably expect," and thus, she was discharged for employment misconduct.

In short, the record supports the ULJ's determination that Williams was discharged for unexcused absenteeism, which constitutes serious employment misconduct.

II. The ULJ was within his discretion to refuse to issue subpoenas.

A ULJ has the power to subpoena witnesses, documents, and other exhibits if the requesting party shows the evidence is necessary, Minn. R. 3310.2914, subp. 1 (2019), and a "duty to assist" parties with the development of the record. *White v. Univ. of Minn. Physicians Corp.*, 875 N.W.2d 351, 357 (Minn. App. 2016). "A request for a subpoena may be denied if the testimony or documents sought would be irrelevant, immaterial, or unduly cumulative or repetitious." *Icenhower v. Total Auto., Inc.*, 845 N.W.2d 849, 853 (Minn. App. 2014) (quoting Minn. R. 3310.2914, subp. 1 (2013)), *rev. denied* (Minn. July 15, 2014). We review a ULJ's subpoena decision for abuse of discretion. *Id.*

Before the hearing, Williams asked the ULJ to subpoena five witnesses and 17 other items. Four of the requested witnesses were other Massage Envy employees whom she expected to testify about their own workplace absences, customer complaints, and training procedures. The other requested witness was Williams's other employer, whom she expected to testify regarding obligations to that employer.

The ULJ denied all subpoena requests. The ULJ concluded this prospective testimony was "not connected with the core issues here today and wouldn't shine any light on any additional information." The ULJ concluded the other subpoena requests were "not relevant" and, of the "numerous requested pieces of information, many of them ha[d] been given in the testimony today." On reconsideration, the ULJ affirmed that "[m]any of the requests were covered in [Massage Envy's] testimony" and "[t]he requests for information that were not asked . . . in the examination were all not relevant." Our review of the record supports this conclusion.

Williams argues the ULJ failed to assist her in developing the record by not issuing subpoenas. We disagree. The duty to assist parties in developing the record does not extend to irrelevant information. *White*, 875 N.W.2d at 357 (reversing and remanding because the ULJ failed to assist the relator in developing the record regarding a relevant fact). The record shows that the ULJ assisted in developing the record by asking relevant questions of both Williams and the clinic manager, pursuing and clarifying the issues Williams raised, and assisting Williams with cross-examination. The record also supports the ULJ's determination that the subpoenas would only produce information that was irrelevant or cumulative. Therefore, the ULJ did not abuse his discretion in declining to issue subpoenas.

Affirmed.