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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-300**

Anthony Deutz,
Relator,

vs.

West Publishing Corporation,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed January 9, 2012
Affirmed
Stauber, Judge**

Department of Employment and Economic Development
File No. 26048915-3

Anthony Deutz, Somerset, Wisconsin (pro se relator)

Susan E. Ellingstad, Lockridge, Grindal, Nauen, P.L.L.P., Minneapolis, Minnesota (for respondent employer)

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

Considered and decided by Larkin, Presiding Judge; Klaphake, Judge; and Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

Relator challenges the decision of the unemployment law judge (ULJ) that (1) relator was ineligible to receive unemployment benefits because he was discharged for misconduct and (2) relator was not entitled to an additional evidentiary hearing. Relator concedes that he did not return to work, but argues that he failed to return to work because of a medical condition that he would have proven if granted an additional evidentiary hearing. Because the ULJ's findings are supported by substantial evidence and the ULJ did not abuse her discretion by denying relator an additional evidentiary hearing, we affirm.

FACTS

Relator Anthony Patrick Deutz was employed as a campaign sales consultant at respondent West Publishing Corporation (West) from September 15, 2008, to September 8, 2010. In March 2010, relator allegedly developed an anxiety condition in response to stress associated with his position. Relator was placed on a number of leaves of absence. His final leave lasted from July 6, 2010, until August 17, 2010.

Relator failed to report to work following this leave, claiming that he was "uncomfortable" about returning. On August 18, West contacted relator and informed him that, unless he applied for an extension of his leave, his continued absence from work would constitute an unexcused absence. Relator continued to refuse to report to work. In an email to relator dated August 26, West reiterated that relator's failure to report to work constituted an unexcused absence and noted that if relator required

additional medical leave, relator needed to provide West with proper documentation from his medical provider. West then informed relator that he had until September 2 to provide the requested information or his employment would be terminated. Relator failed to provide West with the requested documentation and continued to refuse to return to work. West terminated relator's employment on September 8.

Respondent Department of Employment and Economic Development (DEED) determined that relator was eligible for unemployment benefits because relator's conduct "was not intentional or negligent, and therefore was not employment misconduct." Relator received unemployment benefits totaling \$7,247.

West appealed the determination to a ULJ, who reversed the determination and held that relator was ineligible to receive unemployment benefits because West discharged relator for employment misconduct. Specifically, the ULJ held that relator's repeated refusal to report to work following the conclusion of his leave violated the reasonable expectations of West under Minn. Stat. § 268.095, subd. 6(a) (2010). Relator filed a request for reconsideration, and the ULJ issued an order affirming her earlier decision. This certiorari appeal follows.

D E C I S I O N

The court of appeals may affirm, reverse or modify the decision of a ULJ if the substantial rights of the petitioner may have been prejudiced because the ULJ's findings, inferences, conclusions, or decisions are affected by error of law or unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2010).

I.

An employee discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). “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.” Minn. Stat. § 268.095, subd. 6(a).

“Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). “Whether the employee committed a particular act is a question of fact.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We defer to the ULJ’s credibility determinations and findings of fact, *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007), and will not disturb the ULJ’s factual findings if substantially supported by the evidence. *Skarhus*, 721 N.W.2d at 344. But whether an employee’s act constitutes disqualifying misconduct is a question of law, which we review de novo. *Schmidgall*, 644 N.W.2d at 804.

A. Findings

The ULJ found that West “discharged [relator] for failing to return to work after his leave and for failing to submit any documentation in support of additional leave or requesting accommodation.” The ULJ’s findings are substantially supported by the record. West warned relator—beginning as early as August 18, 2010—that relator’s

failure to return to work following the conclusion of his leave would constitute an unexcused absence. Such warnings occurred repeatedly until relator's employment was terminated on September 8. Throughout this time, West was willing to allow relator to return to work if relator so desired.

While relator claimed that his failure to return to work stemmed from a medical issue, relator failed to provide West with documentation of his condition, despite repeated requests from West to do so. Relator even admitted at the evidentiary hearing that he did not request, nor did he receive, any documentation from his doctor that would have justified a further extension of his leave. Based on the foregoing, the record fully supports the ULJ's finding that West terminated relator's employment because relator failed to return to work after his medical leave and that relator failed to request or submit documentation supporting additional leave.

B. Misconduct

An employee's unexcused absence from work constitutes misconduct. *Del Dee Foods, Inc. v. Miller*, 390 N.W.2d 415, 417 (Minn. App. 1986). As a general rule, an employee's "refus[al] to abide by an employer's reasonable policies and requests amounts to disqualifying misconduct." *Schmidgall*, 644 N.W.2d at 804.

We have previously held that an employee's failure to return to work following a medical leave "in deliberate and direct contravention of the employer's directive" constitutes employment misconduct that precludes the employee from collecting unemployment compensation benefits. *Fresonke v. St. Mary's Hosp.*, 363 N.W.2d 328, 330 (Minn. App. 1985). Such action by the employee demonstrates a lack of concern by

the employee for retaining his job, thereby constituting employment misconduct under chapter 268. *Id.*; *see also* Minn. Stat. § 268.095, subd. 6(a) (defining employment misconduct).

Accordingly, relator's repeated failure to report to work following the conclusion of his medical leave, combined with his deliberate failure to provide West with the requested documentation, constituted employment misconduct that disqualified relator from receiving unemployment benefits.

II.

A party may file a request for reconsideration following an adverse decision by the ULJ. Minn. Stat. § 268.105, subd. 2(a) (2010). The statute allows the ULJ to (1) modify the findings of fact and decision; (2) set aside the decision and direct that an additional evidentiary hearing be held; or (3) affirm the findings of the decision. *Id.* We defer to a ULJ's decision to not hold an additional hearing and will only reverse that decision for an abuse of discretion. *Skarhus*, 721 N.W.2d at 345; *Ywswf*, 726 N.W.2d at 533.

To prevail on the request for reconsideration, relator must show both (a) that the subsequent evidence would likely change the outcome of the decision, and (b) that relator had good cause for not previously submitting the evidence. *Ywswf*, 726 N.W.2d at 534; Minn. Stat. § 268.105, subd. 2(c) (2010). Neither factor is present here.

First, relator's additional evidence would not likely change the outcome of the ULJ's original finding. Relator claims that the ULJ should have considered medical evidence that allegedly showed that relator's work environment "was having a profound negative impact" on his health. As the ULJ noted, however, this evidence does not

change the fact that relator was absent from work, without West's approval, for three weeks following the conclusion of his leave of absence. Nor does the evidence alter the fact that relator failed to present medical evidence to West that may have excused his absence despite West's repeated requests for such information. While relator may have a medical reason that justified his absence, his failure to provide West with that information renders moot any medical records or testimony that relator now hopes to present.

Second, while relator claims that he was unaware that the hearing before the ULJ would address whether his actions constituted employment misconduct, such a claim is without merit. In *Ywswf*, we held that good cause did not exist if a relator had notice of what would be discussed at the hearing and nevertheless failed to submit available evidence. 726 N.W.2d at 534. As the ULJ noted in her memorandum, the Notice of Appeal sent to relator stated in bold print "Issues to be Considered at this Hearing: The reason [relator] separated from [West]." Furthermore, the initial eligibility determination directly discussed whether relator's separation from West occurred due to employment misconduct. Accordingly, relator should have known that the hearing would discuss the issue of misconduct, and therefore relator cannot show good cause for failing to submit the relevant evidence at the initial hearing.

Given that relator has failed to show both the existence of good cause and likelihood that the omitted evidence would change the original decision, the ULJ did not abuse her discretion by denying relator an additional evidentiary hearing.

Affirmed.