STATE OF MINNESOTA
IN COURT OF APPEALS
A11-387

Robert Streich,
Relator,

vs.

Associated Milk Producers, Inc.,
Respondent,

Department of Employment and
Economic Development,
Respondent.

Filed January 17, 2012
Affirmed
Crippen, Judge[*]

Department of Employment and Economic Development
File No. 26596083-3

Robert Streich, Marietta, Minnesota (pro se relator)

Associated Milk Producers, Inc., Dawson, Minnesota (respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Schellhas, Judge; and Crippen, Judge.

---

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

CRIPPEN, Judge

Relator challenges an employment misconduct determination, contending that the unemployment law judge (ULJ) erred in determining that a single, allegedly unintentional incident constituted misconduct. Because relator's conduct involved a serious safety violation and was negligent, and the behavior was not inadvertent, we affirm.

FACTS

Relator Robert Streich worked as a drying operator for respondent Associated Milk Producers, Inc. (AMPI), a dairy cooperative. Respondent requires its employees to wear a safety harness when on top of a milk truck. Respondent specifically emphasized this policy at relator's worksite in August 2010, shortly after the fatal fall of an unharnessed employee at another AMPI plant. Relator was aware of the incident, and was fully trained on safety-harness policies and procedures.

On November 5, 2010, relator put on a safety harness and climbed on top of the milk truck; after completing his duties on top of the truck, relator climbed down and took off the safety harness. As he proceeded with his tasks on the ground, relator realized he had forgotten the required milk samples on top of the truck. He climbed back up the truck, without a safety harness. After picking up the samples, relator noticed that he had missed a spot while washing the truck. He had just begun to wash the dirty spot with a hose when his supervisor entered the area and asked him to come down from the truck. Respondent terminated relator's employment on November 8 based solely on relator's November 5 violation of the safety-harness policy.

Determining that relator's actions were not employment misconduct, respondent Department of Employment and Economic Development (DEED) granted relator's unemployment benefits application. Respondent AMPI appealed. In January 2011, the ULJ issued a decision reversing the agency's determination of eligibility. The ULJ found that relator was discharged because of employment misconduct, because "the potential severity of harm . . . was grave" and "employment misconduct includes negligent conduct." Consequently, relator was found ineligible for unemployment benefits. Relator requested reconsideration and, in February 2011, the ULJ affirmed the decision.

D E C I S I O N

If a ULJ's "findings, inferences, conclusion, or decision" are affected by an error of law or unsupported by substantial evidence in the record, and may have prejudiced relator's substantial rights, we are authorized to reverse or modify the decision. Minn. Stat. § 268.105, subd. 7(d) (2010).

If an applicant for unemployment benefits was discharged from employment because of employment misconduct, the applicant is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). Whether an employee committed employment misconduct is a mixed question of fact and law. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). "Whether the employee committed a particular act is a fact question, which we review in the light most favorable to the decision and will affirm if supported by substantial evidence." *Dourney v. CMAK Corp.*, 796 N.W.2d 537, 539 (Minn. App. 2011). But "[d]etermining whether a particular act constitutes

disqualifying misconduct is a question of law" which we review de novo. *Stagg*, 796 N.W.2d at 315.

Under Minnesota law, employment misconduct is "intentional, negligent, or indifferent conduct" that clearly displays "a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee" or a "substantial lack of concern for the employment." Minn. Stat. § 268.095, subd. 6(a) (2010). Employment misconduct is not "conduct that was a consequence of the applicant's inefficiency or inadvertence." *Id.*, subd. 6(b)(2) (2010). And "[i]f the conduct for which the applicant was discharged involved only a single incident, that is an important fact that must be considered in deciding whether the conduct rises to the level of employment misconduct." *Id.*, subd. 6(d) (2010).

1.

Relator argues that the ULJ erred by determining that this single incident constitutes employment misconduct because the incident did not have a significant adverse impact on the employer.

"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). If an applicant was discharged based on a single incident, that is "an important fact that must be considered." Minn. Stat. § 268.095, subd. 6(d). This language permits a finding that a single incident, if sufficiently serious, constitutes employment misconduct. Safety protocol designed to protect human lives requires strict adherence. *See Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 525

(Minn. 1989) (observing that, in the medical field, "strict compliance with protocol and militarylike discipline is required," because "[h]uman lives depend on it."). Relator violated a safety policy that protects employees from serious injury and death; as relator acknowledges, his discharge occurred shortly after another person's violation of the safety-harness policy was fatal. Accordingly, the ULJ did not err by concluding that relator's single incident of noncompliance with respondent's safety-harness policy constitutes misconduct.

2.

Relator also argues that the ULJ erred by failing to conclude whether his conduct was intentional. Under Minnesota law, employment misconduct includes negligent conduct. Minn. Stat. § 268.095, subd. 6(a). The ULJ specifically found relator's conduct was negligent. Consequently, whether relator's conduct was intentional or not, it falls within the initial definition of employment misconduct.

In the course of briefing his questions about the relationship of his conduct to safety concerns, relator also concludes by characterizing his conduct as "inadvertence, negligent or simple forgetfulness for a single incident." Similarly, he opposes a penalty "for single unintentional acts and inadvertence." Respondent DEED acknowledges the statutory provision that even intentional, negligent, or indifferent conduct is not employment misconduct if it "was a consequence of the applicant's inefficiency or inadvertence." *Id.*, subd. 6(b)(2). As respondent observes, the ULJ did not address this exception. The record shows that inadvertence was not addressed by the ULJ or the

parties, and relator does not explain or offer support for the references to inadvertence in his brief.

The record establishes that relator was aware of respondent's strict policy regarding the use of safety harnesses, and he was aware of the recent death that prompted the clear emphasis on the safety-harness policy. Relator was fully trained on the use of the safety harnesses, and he had personal experience with them; relator had in fact worn a safety harness immediately before the incident. Given relator's familiarity with the safety-harness policy and practice, as well as its importance, and the fact that relator engaged in multiple tasks while on top of the milk truck, it is implausible to characterize his failure to use a safety harness in this instance as mere inadvertence. Because the inadvertence exception to the definition of employment misconduct does not apply in relator's circumstances, we affirm the ULJ's determination that relator's failure to follow respondent's safety-harness policy constituted employment misconduct.

Affirmed.