STATE OF MINNESOTA
IN COURT OF APPEALS
A11-491

Bradley Fehl,
Relator,

vs.

Holiday Stationstores, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed January 9, 2012
Affirmed
Johnson, Chief Judge

Department of Employment and Economic Development
File No. 26216465-3

Bradley Fehl, Willmar, Minnesota (pro se relator)

Holiday Stationstores, Inc., Minneapolis, Minnesota (respondent)

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

Considered and decided by Johnson, Chief Judge; Schellhas, Judge; and Collins, Judge.*

*Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

JOHNSON, Chief Judge

Bradley Fehl was employed by Holiday Stationstores, Inc., as a store manager. Holiday terminated his employment because he submitted four daily accounting reports reflecting a balanced safe despite knowledge that his store's safe was missing $500 in cash and because he failed to timely inform his district manager of the missing cash. An unemployment law judge determined that Fehl engaged in employment misconduct and, thus, is ineligible for unemployment benefits. We agree and, therefore, affirm.

FACTS

Fehl worked as a store manager for Holiday from 1995 to 2010. On August 12, 2010, Fehl discovered that his store's safe was short $500 in cash. He did not account for the missing cash on the daily accounting report that he submitted to his district manager. Instead, Fehl indicated on that day's accounting report that his safe was balanced. Fehl continued to submit false daily accounting reports until August 16, 2010, when he reported the shortage to his district manager. Upon learning of the shortage and Fehl's false reports, the district manager terminated Fehl's employment.

Fehl applied for unemployment benefits. In October 2010, the Department of Employment and Economic Development (DEED) made an initial determination that Fehl is eligible for benefits. Holiday filed an administrative appeal of the initial determination, and an unemployment law judge (ULJ) held an evidentiary hearing in December 2010. At the hearing, Fehl attempted to downplay the significance of the missing cash. He argued that the loss was "virtually nothing" when compared to that

period's five-week gross sales figure. He also attempted to justify his behavior by explaining that he thought he had mistakenly sent the missing cash to the bank and that it would show up on a bank deposit slip one or two days later. Fehl's district manager testified that he terminated Fehl's employment because Fehl falsely indicated that the safe was balanced and failed to timely report the missing cash.

In December 2010, the ULJ determined that Fehl had engaged in employment misconduct and, thus, is ineligible for unemployment benefits. After Fehl filed a request for reconsideration, the ULJ affirmed the December 2010 order. Fehl now appeals by way of a writ of certiorari.

D E C I S I O N

Fehl argues that the ULJ erred by determining that he engaged in employment misconduct and, thus, is ineligible for unemployment benefits. This court reviews a ULJ's decision denying benefits to determine whether the findings, inferences, conclusions, or decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d) (2010). The ULJ's factual determinations will be upheld if supported by substantial evidence, but "whether the act committed by the employee constitutes employment misconduct is a question of law, which we review de novo." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). The definition of employment misconduct includes "intentional, negligent, or indifferent conduct, on the

job or off the job that displays clearly . . . a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee." *Id.*, subd. 6(a). In determining whether an employee committed employment misconduct, the employee's conduct "must be considered in the context of [his] job responsibilities." *Frank v. Heartland Auto. Servs., Inc.*, 743 N.W.2d 626, 630 (Minn. App. 2008) (citing *Skarhus*, 721 N.W.2d at 344).

In this case, the ULJ concluded that Fehl's false daily accounting reports and his failure to promptly notify Holiday of the cash shortage amounted to a "serious violation of the standards of behavior an employer has a right to reasonably expect of an employee." The ULJ stated that four days of false reports was "significant." The ULJ also rejected Fehl's argument that he did not engage in employment misconduct because his conduct was a single incident that did not have a significant impact on the employer.

Fehl challenges the ULJ's decision on two grounds. First, he contends that he did not commit employment misconduct because Holiday did not have a specific policy in place requiring him to immediately report the absence of $500 in cash. Fehl's district manager confirmed that there was no such specific policy. But an express policy is not a prerequisite to a finding of employment misconduct for purposes of unemployment benefits. In *Brisson v. City of Hewitt*, 789 N.W.2d 694 (Minn. App. 2010), for example, this court rejected the employee's argument that he did not commit employment misconduct because his employer did not expressly prohibit the viewing of pornography on the employer's computers. *Id.* at 697. We reasoned that the employer had a right to reasonably expect that an employee would not engage in this type of behavior, even

without an express prohibition. *Id.* This holding is consistent with the statutory definition of employment misconduct, which applies if an employee seriously violates "the standards of behavior the employer has the right to reasonably expect." Minn. Stat. § 268.095, subd. 6(a)(1). Thus, the absence of an express policy does not preclude a finding that Fehl engaged in employment misconduct.

Second, Fehl contends that he did not commit employment misconduct because his actions were but a single incident that did not have a significant negative impact on Holiday. In making this argument, Fehl relies on a prior version of the misconduct statute. Between 2003 and 2009, the statutory definition of employment misconduct included an exception for "a single incident that does not have a significant adverse impact on the employer." Minn. Stat. § 268.095, subd. 6(a) (2008); *see also* 2003 Minn. Laws 1st Spec. Sess. ch. 3, art. 2, § 13, at 1473. In 2009, however, the legislature removed this exception. 2009 Minn. Laws ch. 15, § 9, at 48. At the time of Fehl's termination, and at present, a single incident of alleged misconduct is merely a factor to be considered in determining whether an employee engaged in misconduct. *See* Minn. Stat. § 268.095, subd. 6(d) (2010); *Potter v. Northern Empire Pizza, Inc.*, ___ N.W.2d ___, ___, 2011 WL 3903200, at *2-3 (Minn. App. Sept. 6, 2011), *review denied* (Minn. Nov. 15, 2011). It is debatable whether Fehl's failure to report the cash shortage and his subsequent submission of false daily accounting reports on four occasions is a single incident or multiple incidents. Regardless, the record shows that the ULJ adequately considered the singular or isolated nature of Fehl's conduct by weighing that factor against Fehl's 12 years of managerial experience and his job duties, which included

handling "thousands of dollars every day." Thus, the single-incident factor does not preclude a finding that Fehl engaged in employment misconduct.

Accordingly, the question to be answered is whether the ULJ erred by determining that Fehl's conduct was a serious violation of the standards of behavior Holiday has the right to reasonably expect from its store managers. *See* Minn. Stat. § 268.095, subd. 6(a)(1); *Frank*, 743 N.W.2d at 630. We have consistently held that an act of dishonesty (even a single act) may constitute employment misconduct. *See Frank*, 743 N.W.2d at 630-31 (holding that employee committed employment misconduct by engaging in fraudulent billing because employers have right to insist on integrity); *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305, 307-08 (Minn. App. 1994) (holding that employee committed employment misconduct by falsely claiming to have trained store managers). This is especially true if an employee is responsible for handling the employer's money. In *Skarhus*, for example, we held that the theft of less than four dollars' worth of the employer's product amounted to employment misconduct because the employer no longer could entrust the employee to fulfill her responsibilities as a cashier. 721 N.W.2d at 344. Here, Fehl's responsibilities as a store manager included balancing the safe and accounting for the store's cash. Holiday had a right to reasonably expect that Fehl would do so accurately and honestly, that he would not intentionally falsify his accounting reports, and that he would immediately report a $500 cash shortage to his district manager. *See* Minn. Stat. § 268.095, subd. 6(a)(1); *Skarhus*, 721 N.W.2d at 344. Holiday has a right to reasonably expect this behavior from its store managers even without an express policy. *See Brisson*, 789 N.W.2d at 697. We note that there has been

no suggestion in this case that Fehl stole the missing cash; the employer's concern is his failure to follow proper procedures upon the discovery that cash was missing. Even so, Fehl's conduct constitutes a serious violation of the standards of behavior that Holiday has a right to reasonably expect from its store managers. *See* Minn. Stat. § 268.095, subd. 6(a)(1); *Frank*, 743 N.W.2d at 630.

In sum, the ULJ did not err by determining that Fehl is ineligible for unemployment benefits because he engaged in employment misconduct.

Affirmed.