STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1018

Joel W. Campbell,
Relator,

vs.

Rheaume's House of Lettering, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed April 1, 2013
Affirmed
Rodenberg, Judge

Department of Employment and Economic Development
File No. 29332795-3

Joel W. Campbell, St. Cloud, Minnesota (pro se relator)

Rheaume's House of Lettering, Inc., St. Cloud, Minnesota (respondent)

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

Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and Rodenberg, Judge.

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

RODENBERG, Judge

Relator challenges the decision of the unemployment law judge (ULJ) that he was discharged for employment misconduct and therefore is ineligible for unemployment

benefits. Relator argues that (1) the ULJ's findings were unsupported by substantial evidence in the record and (2) the conduct resulting in his discharge was not employment misconduct because it was a consequence of his chemical dependency. We affirm.

FACTS

Relator worked full-time as a customer-service representative for respondent-employer Rheaume's House of Lettering (RHL) from September 1, 2010 until December 5, 2011. In the fall of 2011, relator's truck was repossessed and RHL management allowed him to use a company vehicle for a few days to get to work. RHL learned that relator had been charged with driving while impaired (DWI) while driving RHL's vehicle and the vehicle's license plates had been impounded. Although relator assured RHL management that, with the help of a part-time company accountant, he would retrieve the license plates, after several months RHL learned that relator had not been truthful about contacting the accountant for help, and had taken no steps toward retrieving the license plates.

During this same period, relator was homeless and RHL management, again showing concern for relator and his situation, allowed him to stay overnight on company premises while looking for an apartment. On December 2, 2011, relator reported to work while under the influence of alcohol, and management also found liquor hidden in the building. Management lost trust in relator, took away his keys, and forbad him from staying on the premises overnight. Nonetheless, relator stayed on RHL's property for the next two nights.

On December 5, RHL placed relator on a four-week unpaid suspension because he had been charged with DWI when driving the company vehicle, failed to resolve the impoundment of the company license plates, reported to work while intoxicated, hid alcohol on company premises, and stayed overnight on the company property after being explicitly told that he could no longer do so. His return to work was conditioned on successfully completing a chemical-dependency treatment program, and he was given four weeks in which to arrange for his enrollment in a treatment program and to notify RHL of his plans.

Shortly thereafter, relator stopped consuming alcohol and, on December 14, relator called RHL management to report that he was working on getting into a treatment program. According to RHL witnesses, relator gave them no more information about his progress in enrolling in a treatment program, although he did contact RHL's controller on December 16 to request that she send his payroll information to the county. They spoke again on December 30 to discuss his W-2 form. According to relator, on December 16, he also contacted RHL to speak to management and left a message asking to be called back when told they were busy. RHL could neither confirm nor deny this, but noted that the person who allegedly took the message did not recall receiving it. Relator also testified that when he spoke with the controller on December 30 to discuss his W-2 form, he told her that he had received his evaluation two days previously. The controller testified that they spoke only about the W-2 form. The ULJ made findings consistent with RHL's witnesses' testimony.

On January 6, RHL management sent a letter to relator, informing him that, because they had not heard from him, they assumed that he was not returning to work and they accepted his voluntary termination of employment. Relator did not pick up this letter from his post office box until January 24, because of his transportation problems. Meanwhile, relator received authorization for chemical-dependency treatment on January 9, 2012 and began out-patient treatment on January 24.

After his separation from employment, relator applied for unemployment benefits, and the Minnesota Department of Employment and Economic Development (DEED) determined that he was ineligible for benefits because he had been discharged for employment misconduct. He appealed. The ULJ held an evidentiary hearing and then issued a decision ruling that relator had been discharged for employment misconduct and is ineligible for benefits.

Relator requested reconsideration, and the ULJ issued amended findings. While some of the original findings were modified, the ULJ explicitly stated that these modifications did not materially affect the ineligibility decision. The ULJ addressed whether relator's conduct was a consequence of his chemical dependency and thus did not constitute misconduct under Minn. Stat. § 268.095, subd. 6(b)(9) (2012). The ULJ found that reporting to work while intoxicated and keeping alcohol at work were consequences of relator's chemical dependency. But the ULJ also ruled that relator's conduct in failing to take any action to resolve the impoundment of the company license plates, in being untruthful to the employer on that issue, and in continuing to stay on the premises overnight after being prohibited from doing so were not a consequence of his

chemical dependency and instead amounted to employment misconduct, rendering relator ineligible for unemployment benefits. This certiorari appeal followed.

D E C I S I O N

Whether an employee committed misconduct sufficient to disqualify him from receipt of unemployment benefits is a mixed question of law and fact. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). "Whether [an] employee committed a particular act is a question of fact." *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). "Determining whether a particular act constitutes disqualifying misconduct is a question of law," which we review de novo. *Stagg*, 796 N.W.2d at 315.

In conducting a review of the ULJ's decision, we may reverse or modify the ULJ's decision if the substantial rights of the petitioner may have been prejudiced because findings of fact are "unsupported by substantial evidence in view of the entire record as submitted" or if the decision was affected by an error of law. Minn. Stat. § 268.105, subd. 7(d)(4), (5) (2012). "Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006).

Relator first argues that RHL discharged him and that its statement in a letter dated January 6, 2012 that he voluntarily terminated his employment is error. Relator is correct. As the ULJ ruled, because relator had been suspended without pay for more than 30 days, he had been discharged as a matter of law.

> A discharge from employment occurs when any words or actions by an employer would lead a reasonable employee to

> believe that the employer will no longer allow the employee to work for the employer in any capacity. . . . A suspension from employment without pay of more than 30 calendar days is considered a discharge.

Minn. Stat. § 268.095, subd. 5(a) (2012); *see* Minn. Stat. § 268.085, subd. 13(b) ("A suspension from employment without pay for more than 30 calendar days is considered a discharge from employment under section 268.095, subdivision 5."). RHL suspended relator on December 5 and the 31st day following the suspension was January 5, when the suspension became a discharge for purposes of the unemployment-insurance law.

Next, relator contends that, contrary to the ULJ's findings, he did make several attempts to update RHL as to his status, including leaving a message for management to call him back on October 16 and telling the controller on October 30 that he had received his chemical-dependency evaluation. He argues that the ULJ's assessment of the testimony on this point was very one-sided and cites to phone records that he contends support his testimony. First, the ULJ's decision to credit RHL's witnesses rather than relator's is a credibility decision by the ULJ to which we must defer. *Skarhus*, 721 N.W.2d at 345. Second, the issue here is whether relator's actions leading to the suspension constituted employment misconduct. *See City of Melrose v. Klasen*, 392 N.W.2d 733, 735 (Minn. App. 1986) (stating, under an earlier but similar version of the statute, that if an employee is suspended for more than 30 days, the employee is not entitled to receive benefits if the suspension is the result of misconduct).

Finally, relator claims that the conduct for which he was suspended was the result of his chemical dependency and therefore not misconduct. We first address whether, in the absence of this claim, his actions would constitute misconduct. "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) (2012). "When an employee's refusal to carry out a directive of the employer is deliberate, calculated, and intentional, then the refusal is misconduct." *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 806 (Minn. 2002). Here, relator's actions in contravening management's explicit directive that he could no longer stay overnight on the company premises, which was reinforced by RHL taking relator's keys, along with relator's failing to follow through on his promise to obtain the return of the license plates and untruthfully asserting that he had contacted the company accountant for help, constitutes employment misconduct.

Employment misconduct, however, does not include "conduct that was a consequence of the applicant's chemical dependency." Minn. Stat. § 268.095, subd. 6(b)(9). The ULJ ruled that certain aspects of relator's conduct, including having alcohol at work and being under the influence of alcohol at work, were a consequence of his chemical dependency and therefore not misconduct. However, the ULJ went on to rule that relator's conduct in failing to take any action to resolve the issue of the license plates and not being truthful to the employer about the plates was not a consequence of his chemical dependency. Furthermore, the ULJ found that the preponderance of the evidence showed that when relator stayed overnight at the employer's premises after being prohibited from doing so, it was not a consequence of his chemical dependency.

Instead, relator made an intentional decision to stay there because he had no other place to stay. This was intentional conduct unrelated to his chemical dependency.

Relator argues that the ULJ did not understand the ramifications of being an alcoholic and that it is an all-consuming disease, eventually becoming the alcoholic's one and only focus in life. At the hearing, relator testified that alcohol affected his work performance, leading to poor judgment, such as when he did not follow up on his promise to obtain the return of the impounded license plates. The ULJ noted that the logical conclusion of this argument was that any and all conduct is a consequence of his chemical dependency. Consequence is defined, in relevant part, as "[s]omething that logically or naturally follows from an action or condition"; "[t]he relation of a result to its cause"; and "[a] logical conclusion or inference." *The American Heritage Dictionary of the English Language* 401 (3d ed. 1992). The ULJ's finding that the preponderance of the evidence did not show that relator's conduct was a consequence of his chemical dependency and instead constituted disqualifying misconduct[1] is supported by substantial evidence in the record and, on these facts, is correct as a matter of law.

Affirmed.

[1] The ULJ recognized that he had developed insufficient facts regarding relator's DWI charges but found it unnecessary to do so in light of the other facts showing relator's misconduct. *See generally* Minn. Stat. § 268.095, subd. 6(c) (2012) (providing that regardless of subdivision 6(b)(9), conduct that violates laws regarding driving while impaired, alcohol-related school bus driving, or implied consent, Minn. Stat. §§ 169A.20, .31, .50–.53 (2012), and that interferes with, or adversely affects, employment is employment misconduct).