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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1745**

Dustin A. Adamson,
Relator,

vs.

Charter Communications LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 8, 2013
Affirmed
Kirk, Judge**

Department of Employment and Economic Development
File No. 29858252-3

Dustin A. Adamson, Austin, Minnesota (pro se relator)

Charter Communications LLC, St. Louis, Missouri (respondent)

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

Considered and decided by Hudson, Presiding Judge; Kirk, Judge; and Klaphake,
Judge.*

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

UNPUBLISHED OPINION

KIRK, Judge

Relator Dustin A. Adamson challenges the decision of the unemployment law judge (ULJ) that he is not entitled to unemployment benefits because he was discharged from respondent Charter Communications LLC for employment misconduct. We conclude there was no factual or legal error in the ULJ's decision and therefore affirm.

FACTS

Adamson worked for Charter as a technical advisor in a position fielding customer phone calls. He was the subject of two coachings and a verbal warning before being discharged from Charter in June 2012.

The first coaching occurred in December 2011 after Adamson was rude and disrespectful to a supervisor. Charter alleged that Adamson sent an e-mail and chat message to his supervisor using pejorative language to describe an affiliated team of employees. Adamson wrote that "Workforce doesn't know how to do their job," "I refuse to believe they are this ignorant," and "people are rude to me." When his supervisor explained the procedures that Adamson was addressing, Adamson responded that his supervisor was making an "excuse" and that the other team was attempting "to get in people's heads."

The second coaching occurred in February 2012 after Adamson was approached by a team captain while Adamson was on the phone with a customer. Adamson rebuked the team captain, left the customer on hold for more than five minutes, and expressed his disgust with the team captain's behavior in an online group chat.

Adamson then received a verbal warning in April in response to a March incident where his supervisor observed him being rude to two coworkers. Upon witnessing the incident, the supervisor pulled Adamson aside. Adamson argued with his supervisor in a public area and then left for the remainder of the day.

On May 31, a member of Charter's quality-control division contacted Adamson's supervisor after monitoring one of Adamson's customer calls. The quality-control employee heard Adamson disconnect the customer after the customer twice asked to speak to Adamson's supervisor. Charter investigated whether the disconnection came from Adamson's phone or the customer's phone, and determined that the disconnection came from Adamson's phone. The supervisor met with Adamson and advised him that his calls would be monitored for the remainder of the day. On his other calls that day, Adamson was observed providing inaccurate billing information to one customer and ignoring another customer for more than eight minutes while he typed notes. Adamson was instructed to submit to a drug test and then was suspended with pay pending the test results. Charter did not receive the results of the drug test until June 5. Charter denies that the drug test results played a role in its decision to discharge Adamson, and the results of the test were not entered into evidence and are not part of the record before this court.

On June 1, Adamson was charged with felony terroristic threats, which Charter subsequently learned of. During the course of investigating the June 1 charge, Charter became aware that Adamson was convicted in February 2012 on a charge of fifth-degree assault. Upon learning of his June 1 charge, Charter changed Adamson's suspension to

an unpaid leave. On June 7, Charter notified Adamson by telephone and letter that he was being discharged based on his “mistreatment of customers and poor customer service on multiple recorded calls; [his] violation of Company policy by failing to report a criminal conviction in February 2012; and [his] recent arrest and charge of a felony of a serious nature.”

On June 22, respondent Department of Employment and Economic Development issued Adamson a determination of ineligibility, concluding that he was not eligible for unemployment benefits because he was discharged for employment misconduct. Adamson appealed, and the ULJ conducted a hearing on July 17. The ULJ found that Adamson “exhibited a rude and disrespectful attitude toward customers and coworkers despite prior warnings” and that Charter’s concerns were compounded by the charges filed against him on June 1. The ULJ concluded that Adamson’s actions violated the standards of behavior that Charter had a right to reasonably expect. Adamson sought reconsideration of the ULJ’s decision, and the ULJ affirmed, concluding that Adamson was irate and unprofessional in the workplace and that he deliberately disconnected a customer call.

Pursuant to Minn. Stat. § 268.105, subd. 7(a) (2012), this court granted Adamson’s petition for a writ of certiorari.

D E C I S I O N

I. The record supports the ULJ’s factual conclusions.

Adamson raises two challenges to the factual conclusions of the ULJ. He contends that Charter’s witnesses at the hearing lacked credibility because they seldom

worked with Adamson on a day-to-day basis, and that technical problems in Charter's telecommunications system led to the dropped call that ultimately led to Adamson's suspension.

A. Credibility determination of the ULJ.

This court may reverse or modify the decision of the ULJ if, among other reasons, the ULJ rendered a decision unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d)(5) (2012); *see Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 29 (Minn. App. 2007) (stating that this court will uphold a ULJ's credibility findings if they are supported by substantial evidence). When the credibility of a party or witness has a "significant effect" on the outcome of a decision, the ULJ is required to "make credibility findings and to 'set out the reason for crediting or discrediting' the contested testimony." *Wichmann*, 729 N.W.2d at 29 (quoting Minn. Stat. § 268.105, subd. 1(c) (Supp. 2005)). "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).

At the hearing, the ULJ heard testimony from two Charter witnesses: a human resources generalist and Adamson's supervisor. The ULJ made no specific findings regarding the credibility of these witnesses. However, their testimony does not appear to have had a significant effect on the decision. Adamson denied none of the incidents that led to coachings, the verbal warning, or suspension. Instead, he recast the incidents to downplay their severity.

According to Adamson, the first coaching addressed his impatience at requiring an answer from his supervisor immediately. In the second coaching, Adamson admitted to being instructed to “treat our internal customers, being [his] coworkers[,] with the same type of respect [that external customers receive].” On the day of the verbal warning, Adamson admitted to being stared down by his coworkers and to leaving for the remainder of the day. Adamson also agreed that a customer who had asked to speak to Adamson’s supervisor was disconnected from his phone on the day that Adamson was suspended.

The ULJ also had documentary evidence to support the conclusion that Adamson’s behavior was hostile and unprofessional. She received as an exhibit a copy of the Charter documentation prepared concurrently with Adamson’s April 18 verbal warning and signed by Adamson, which described his “hostile manner” in responding to offers of assistance from employees. The ULJ observed that, on the day of his suspension, Charter’s claim that Adamson was behaving inappropriately was supported by the fact that it demanded he submit to a drug test. The ULJ further observed that Adamson’s arrest for terroristic threats compounded Charter’s view that he lacked the professionalism required for his position. Moreover, it is not correct that Charter’s witnesses did not have day-to-day involvement with Adamson. Adamson’s supervisor was involved in addressing all of Adamson’s behavioral incidents, except for the earliest of the coachings.

Because the testimony of Charter’s witnesses was corollary to the documentary evidence that Adamson’s behavior was hostile and inappropriate, the witnesses did not

have a significant effect on the outcome of the case. Thus, the ULJ was not required to set out her reasons for crediting or discrediting their testimony. *See* Minn. Stat. § 268.105, subd. 1(c) (2012). Consequently, Adamson’s contention that the ULJ improperly relied on the testimony of Charter’s witnesses is unjustified.

B. Cause of the disconnected call.

Adamson argues that the ULJ erred in concluding that he disconnected the caller who requested to speak to Adamson’s supervisor, and instead should have relied on Adamson’s contention that the disconnection was a result of a technical glitch in Charter’s systems. The ULJ concluded that “it’s more likely than not that Adamson deliberately disconnected the call rather than summon his supervisor for the customer.”

“This court views the ULJ’s factual findings in the light most favorable to the decision. This court also gives deference to the credibility determinations made by the ULJ. As a result, this court will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008) (citations omitted), *review denied* (Minn. Oct. 1, 2008); *see also McNeilly v. Dep’t of Emp’t & Econ. Dev.*, 778 N.W.2d 707, 711-12 (Minn. App. 2010) (applying substantial-evidence test); *Skarhus*, 721 N.W.2d at 344 (same).

The ULJ concluded—and Adamson does not dispute—that a member of Charter’s quality-control department alerted Adamson’s supervisor to the inappropriate demeanor of Adamson on the call before it was disconnected. Nor does Adamson dispute that the call occurred. He merely recasts the nature of the disconnection. It is unlikely that a quality-control employee would have alerted Adamson’s supervisor to the contents of the

phone call unless Adamson's behavior was not in compliance with company standards. Because Adamson does not dispute the existence of the call and the existence of the calls later in the day that Charter identified as a basis for Adamson's discharge, the ULJ did not err, and substantive evidence in the record supported the conclusion that Adamson was more likely than not to have deliberately disconnected the customer.

II. Adamson's actions amounted to employment misconduct.

Adamson next appears to argue that the ULJ erred in concluding that Adamson's conduct amounted to employment misconduct. The ULJ determined that Adamson's rude and disrespectful behavior towards customers and coworkers violated the standards of behavior Charter had the right to reasonably expect.

“An appellate court will exercise its own independent judgment in analyzing whether an applicant is entitled to unemployment benefits as a matter of law.” *Irvine v. St. John's Lutheran Church of Mound*, 779 N.W.2d 101, 103 (Minn. App. 2010). “We review de novo a ULJ's determination that an applicant is ineligible for unemployment benefits.” *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 30 (Minn. App. 2012).

Employment misconduct is defined, in part, as “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; or . . . a substantial lack of concern for the employment.” Minn. Stat. § 268.095, subd. 6(a) (2012). “[A]n employee's decision to violate knowingly a reasonable policy of the employer is misconduct.” *Schmidgall v. FilmTec Corp.*, 644

N.W.2d 801, 806 (Minn. 2002). What constitutes a reasonable policy will vary by the circumstances of each case. *Sandstrom v. Douglas Mach. Corp.*, 372 N.W.2d 89, 91 (Minn. App. 1985). A “pattern of failing to follow policies and procedures and ignoring directions and requests” of an employer is the type of misconduct that disqualifies an employee from receiving unemployment benefits. *Gilkeson v. Indus. Parts & Serv., Inc.*, 383 N.W.2d 448, 452 (Minn. App. 1986). “[T]he use of harsh or unkind language” can constitute misconduct. *Ideker v. LaCrescent Nursing Ctr., Inc.*, 296 Minn. 240, 241, 207 N.W.2d 713, 714 (1973).

Adamson argues that he was an exemplary employee who developed a cost-saving software system, and that he successfully managed most of the calls that he fielded while in the service of Charter. He contends that Charter selected only a few troublesome calls out of numerous otherwise successful calls as a basis for his termination. Adamson does not dispute that he received two coachings, a verbal warning, and that he was confronted by his supervisor on May 31 about disconnecting a customer’s call.

Adamson’s job required him to field calls from customers, and Charter could reasonably expect that Adamson act cordially and professionally in his interactions with customers and that he avoid hostility towards his coworkers. Adamson undoubtedly understood that this was expected of him, since Charter gave him two coachings and a verbal warning before he was discharged. *See Schmidgall*, 644 N.W.2d at 806-07; *Nelson v. Hartz Truckline*, 401 N.W.2d 436, 439 (Minn. App. 1987) (concluding that continuing to engage in prohibited acts after receiving a warning from employer

constituted employment misconduct), *review denied* (Minn. Apr. 29, 1987). Adamson's conduct meets the statutory definition of employment misconduct.

Adamson also appears to argue that mental illness or incapacitation had an effect on his job performance. “[C]onduct that [is] a consequence of the applicant’s mental illness or impairment” is not employment misconduct. Minn. Stat. § 268.095, subd. 6(b)(1) (2012). Adamson advised the ULJ that he had sought and received time off under the Family and Medical Leave Act, 29 U.S.C. § 2612 (2006), after physicians diagnosed him with work-related stress. However, the only link that Adamson offered between his diagnosis and his misconduct is his suggestion that a medication he was taking can cause dizziness, which may have led to an unsteady gait that prompted Charter to require Adamson to take a drug test. But Charter contended, and the ULJ believed, that the results of the drug test did not affect Charter’s decision to discharge Adamson. Moreover, Adamson asserted to the ULJ and continues to assert on appeal that he did not engage in behavior that was hostile or irate. Therefore, the record does not contain sufficient evidence to support a conclusion that Adamson’s misconduct fell under the statutory exception for mental illness or impairment.

Finally, Adamson also argues that his request to include information about his work history in the record before the department was improperly denied. ULJs may not unreasonably deny a subpoena request. Minn. Stat. § 268.105, subd. 4 (2012). “Subpoenas are available to a party to compel the attendance of witnesses, the production of documents or other exhibits *upon a showing of necessity* by the party applying for subpoenas.” Minn. R. 3310.2914, subp. 1 (2012) (emphasis added). Parties who are

denied a subpoena can also request one at the hearing from the ULJ, who may adjourn the hearing to allow sufficient time for service of and compliance with the subpoena. *Id.* There is no evidence in the record that Adamson requested a subpoena before the hearing. Even if he had, when he raised at the hearing the possibility of subpoenaing his work history from Charter, the ULJ determined that he was seeking information about his work history at the end of 2011, which was not relevant to the proceeding. Because Adamson failed to request a subpoena before the hearing and to show the necessity of a subpoena (let alone the relevance of the evidence he was seeking to his alleged misconduct), the ULJ did not err in denying his request.

Affirmed.