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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0648**

Kimberly Wood,
Relator,

vs.

Red Lake Band of Chippewa Indians - Red Lake Tribal Council,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed December 17, 2012
Affirmed
Bjorkman, Judge**

Department of Employment and Economic Development
File No. 28969906-3

Kimberly Wood, Red Lake, Minnesota (pro se relator)

Red Lake Band of Chippewa Indians – Red Lake Tribal Council, Red Lake, Minnesota
(respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Cleary, Judge; and
Toussaint, Judge.*

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

UNPUBLISHED OPINION

BJORKMAN, Judge

Relator challenges the unemployment-law judge's (ULJ) determination that she is ineligible for benefits because she was discharged for employment misconduct. Because substantial evidence supports the ULJ's findings, the conduct for which relator was discharged constitutes misconduct, and relator received a fair hearing, we affirm.

FACTS

Relator Kimberly Wood worked as a police officer for respondent Red Lake Band of Chippewa Indians from September 2010 to December 7, 2011, when her employment was terminated. Wood applied to respondent Minnesota Department of Employment and Economic Development (DEED) for unemployment benefits. DEED determined that Wood is ineligible for benefits because she was discharged for employment misconduct. Wood appealed, and a ULJ conducted an evidentiary hearing.

Evidence adduced during the hearing shows that on November 17, 2011, Wood arrested a juvenile suspected of committing an assault several days earlier. Because she did not have a warrant, Wood arrested the juvenile for disorderly conduct, even though Wood knew he had not committed that offense. On November 22, Red Lake suspended Wood for three days for making an unlawful arrest. Wood filed a grievance.

On or about December 1, Red Lake's director of public safety, Bill Brunelle, met with Wood regarding her grievance. Brunelle testified that he informed Wood that a grievance-appeal panel would consider her suspension on December 7 and the panel would include investigator Geoffrey Pierre. Wood testified that Brunelle told her that she

would meet with the panel that day but did not tell her the meeting time. Wood explained that she approached Pierre on December 2 in his office to see if he knew when the meeting would occur. Because Pierre did not seem to know anything about her situation, Wood told him about the arrest and her suspension, but she claimed she did not say anything to try to influence him. Pierre recalls a more expansive conversation; Wood questioned him about the grievance-appeal process, acted as if she knew talking to him was wrong by lowering her voice when another employee walked by his office, and asked Pierre to keep their conversation between the two of them. Pierre promptly informed Brunelle and Administrative Captain Kendall Kingbird of the conversation and documented it in a letter to Brunelle.¹ Red Lake discharged Wood for making an unlawful arrest and attempting to interfere with the grievance-appeal process.

After the hearing, the ULJ found that Wood improperly arrested the juvenile and attempted to unfairly influence a member of the grievance-appeal panel. The ULJ concluded that Wood's actions constitute employment misconduct and she is therefore ineligible for unemployment benefits. Upon request for reconsideration, the ULJ affirmed. This certiorari appeal follows.

D E C I S I O N

We review a ULJ's decision to determine whether a party's substantial rights were prejudiced because the findings, inferences, conclusion, or decision were made upon unlawful procedure, affected by an error of law, or unsupported by substantial evidence in view of the record as a whole. Minn. Stat. § 268.105, subd. 7(d) (2012). "Substantial

¹ Kingbird read Pierre's letter into the record during the evidentiary hearing.

evidence is ‘(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety.’” *Dourney v. CMAK Corp.*, 796 N.W.2d 537, 539 (Minn. App. 2011) (quoting *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002)).

An employee who is discharged for “employment misconduct” is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2012). Employment misconduct is “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.” *Id.*, subd. 6(a) (2012). Whether an employee committed a particular act is a fact question, which we review for substantial evidence, giving deference to the ULJ’s credibility determinations. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But whether an act constitutes misconduct is a question of law, which we review de novo. *Id.*

I. Substantial evidence supports the ULJ’s factual findings.

Wood asserts that the ULJ’s finding that “she attempted to unfairly influence a member of an appeal panel” lacks evidentiary support, essentially arguing that the ULJ erred by failing to credit her testimony.² We are not persuaded. Wood’s testimony that she was unaware that Pierre was a member of the panel is markedly different than the

² Wood does not dispute that she made an unlawful arrest, and thus the ULJ’s factual findings as to that basis for Wood’s discharge are not at issue on appeal.

accounts of other witnesses. Brunelle testified that he informed Wood that Pierre was going to be on her grievance-appeal panel and that Wood “was clearly informed that this was a review board and she was never at any point in time told this was a meeting.” Pierre likewise indicated in his oral statement to Brunelle and written account of the conversation that Wood knew he was on the panel. The ULJ expressly found that Brunelle’s testimony was more credible than Wood’s, and we will not disturb this determination on appeal. *See id.* at 345 (“Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.”).

Wood also argues that she did not do or say anything to influence Pierre. Substantial evidence supports the ULJ’s contrary finding. Pierre’s letter indicates that Wood lowered her voice when she saw another employee walk by his office and asked Pierre to keep their conversation confidential. Pierre noted that Wood seemed to know that talking to him about the incident was wrong but that she shared her information freely, stopping at one point to ask if he “was getting all this.” Once again, we will not disturb the ULJ’s express determination that Pierre’s account of the conversation was more credible than Wood’s testimony. *See id.*

Wood next argues that she had no way of knowing that it was improper to speak with Pierre because his participation on the grievance-appeal panel conflicted with Red Lake’s personnel policies. This argument is unavailing. Whether Red Lake complied with its grievance procedures in selecting the panel members is irrelevant in light of the ULJ’s finding that Wood was told Pierre was a member of the grievance-appeal panel assigned to review her grievance. *See Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 316

(Minn. 2011) (“[A]n employee’s expectation that the employer will follow its disciplinary procedures has no bearing on whether the employee’s conduct violated the standards the employer has a reasonable right to expect or whether any such violation is serious.”).

Finally, Wood argues that the evidence does not support the ULJ’s finding that she sought to improperly influence Pierre because the allegations against her were fabricated. We disagree. Not only did Wood waive this argument by not raising it during the hearing before the ULJ, *see Peterson v. Ne. Bank—Minneapolis*, 805 N.W.2d 878, 883 (Minn. App. 2011) (citing *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (declining to consider an issue on appeal that was not raised before the ULJ), but she provides no evidence, beyond mere assertions, to support her contention that Kingbird and Pierre fabricated the allegations to have her terminated. In sum, substantial evidence supports the ULJ’s finding that Wood attempted to unfairly influence a member of the grievance-appeal panel.

II. The actions for which Wood was discharged constitute employment misconduct.

The ULJ concluded that Wood’s improper arrest and attempt to unfairly influence a member of the grievance-appeal panel constitute employment misconduct. We agree. Dishonesty in connection with one’s employment and knowingly violating an employer’s reasonable policies generally constitute disqualifying misconduct. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002) (violation of policies and requests); *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305, 307-08 (Minn. App. 1994) (dishonesty). By

arresting a juvenile for an offense she knew he did not commit, Wood violated Red Lake's unit operation rules. Similarly, Wood interfered with management operations in violation of Red Lake's personnel policies when she attempted to influence Pierre regarding her appeal. Moreover, both of these acts involve dishonesty. Because Red Lake had a right to reasonably expect that Wood would not make an unlawful arrest based on a fabricated charge or attempt to influence a member of her grievance-appeal panel, the ULJ did not err in concluding that Wood committed employment misconduct.

III. Wood received a fair hearing.

A ULJ conducts the evidentiary hearing as an evidence-gathering inquiry, and must ensure that all relevant facts are fully developed. Minn. Stat. § 268.105, subd. 1(b) (2012). The ULJ must run the hearing in such a way that the parties' rights to a fair hearing are protected. Minn. R. 3310.2921 (2011). The ULJ is not required to follow the rules of evidence but "may receive any evidence that possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs." Minn. R. 3310.2922 (2011). Wood argues that she did not get a fair hearing because the ULJ (1) cut her off, (2) improperly focused on her suspension, (3) based his decision on personal feelings and opinions rather than the facts, (4) failed to fully consider the evidence Wood submitted, and (5) improperly relied on hearsay evidence. We address each argument in turn.

First, Wood does not point to any instances where the ULJ cut off her testimony or argument. And our careful review of the record shows that Wood was given multiple opportunities to testify, ask questions, and present other evidence. Second, it was proper

for the ULJ to consider Wood's suspension because her precipitating conduct and her attempt to unfairly influence a participant in the grievance-appeal process were the grounds for her discharge. Third, Wood does not provide any support for her assertion that the ULJ decided the case based on personal feelings and opinions rather than the evidence. Likewise, Wood provides no support for her assertion that the ULJ failed to consider the evidence submitted by Wood. To the contrary, the ULJ considered and expressly rejected Wood's version of the critical events. Finally, it was not improper for the ULJ to rely on Pierre's oral statement to Brunelle and written account of the incident. Pierre immediately informed Brunelle of his encounter with Wood, stating that she acted as if she knew talking to him was wrong. There was no evidence that Pierre had any motive to lie about his conversation with Wood. Because Pierre's statements were reliable and highly probative of Wood's efforts to improperly persuade him regarding her appeal, the challenged hearsay evidence is admissible. *See* Minn. R. 3310.2922. On this record, we conclude that Wood received a fair hearing.

Affirmed.