STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1698

Lori J. Peterson,
Relator,

vs.

Transport Corp of America Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed September 23, 2008
Affirmed
Ross, Judge

Department of Employment and Economic Development
File No. 7351 07

Lori J. Peterson 17112 Pleasant Lane, Brainerd, MN 56401-5031 (pro se relator)

Lee B. Nelson, Katrina I. Gulstad, Department of Employment and Economic Development, 1st National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101-1351 (for respondent Department of Employment and Economic Development)

Transport Corp of America, Inc. 1715 Yankee Doodle Road, Eagan, MN 55121-1616 (respondent)

Considered and decided by Connolly, Presiding Judge; Toussaint, Chief Judge; and Ross, Judge.

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

ROSS, Judge

This certiorari appeal arises from an over-the-road truck driver's discharge from employment for her failure to take a federally-mandated 10-hour break within a 14-hour work period after her supervisor warned her three times to do so. Lori Peterson appeals from an unemployment law judge's decision that she is disqualified from receiving unemployment benefits. Because we find that substantial evidence supports the unemployment law judge's findings and her conclusion that Peterson's violation of her employer's policy incorporating the federal regulation was employment misconduct, we affirm.

FACTS

Lori Peterson was hired as an over-the-road truck driver to haul freight for Transport Corporation of America, Inc. in 2000. Transport terminated her employment in March 2007 for violating its policy requiring her to follow the Federal Motor Carrier Safety Administration regulation that obligates commercial drivers to take a 10-hour break in a 14-hour period. *See* 49 C.F.R. 395.1 & 395.3 (2005) (requiring that, in a 14-hour work period, a commercial motor carrier driver may not drive more than 11 hours unless they have a mandatory ten-hour break).

On March 7, 2007, Peterson left Grand Rapids, Minnesota, at around 2:00 p.m. and drove to Cloquet, where she picked up freight at 4:30 p.m. She drove south, intending to reach Kansas City, Missouri, but at 2 a.m. she stopped to sleep in Bethany, Missouri. After just three and a half hours, at 5:30 a.m. Peterson received two electronic messages from Transport's satellite communication system. Peterson responded, but

could not fall back asleep. She decided to continue driving, leaving Bethany at around 7:30 a.m. After a brief stay at Transport's Kansas City depot, she drove an empty trailer to a customer in Kansas City, Kansas, and, with no break, drove back to Waconia, Minnesota. She arrived around 10:15 p.m. More than 32 hours passed between Peterson's departure from Grand Rapids and her arrival in Waconia.

During that 32-hour work period, Peterson's supervisor urged her three times to take her mandatory break. Between 1:00 p.m. and 1:30 p.m. on March 8, 2007, Bob Volpe, Peterson's manager at Transport, sent Peterson a satellite communication that read, "Looks like you have not take[n] a mandatory 10 hr. break since you left Cloquet yesterday. Suggest you do." A Transport safety officer sent a similar message at 4:30 p.m. Computer generated reports indicate that Peterson received the messages. Volpe also spoke with Peterson by phone, reminding her that she must take the 10-hour break. Peterson did not comply. On March 9, 2007, she was terminated from her employment at Transport for failing to take the mandatory break.

Peterson applied for unemployment benefits. The Department of Employment and Economic Development determined that her failure to take the mandatory 10-hour break was a single instance that did not demonstrate a substantial lack of concern for her employment and that Peterson was therefore not disqualified from receiving unemployment benefits. Transport appealed this administrative decision. After a hearing, the unemployment law judge (ULJ) issued her findings of fact and decision, concluding that Peterson had committed employment misconduct and was disqualified from receiving unemployment benefits. Peterson requested reconsideration, but the ULJ affirmed the disqualification decision. Peterson appeals.

D E C I S I O N

I

Lori Peterson challenges the ULJ's conclusion that Transport discharged her for employment misconduct. She argues that her failure to take a 10-hour break on March 8, 2007, was a single incident that did not have a significant adverse effect on Transport. A person who is discharged from employment is not qualified to receive unemployment benefits if she was discharged for employment misconduct. Minn. Stat. § 268.095, subd. 4 (2006). Employment misconduct includes intentional or negligent conduct that seriously violates the standards the employer may reasonably expect the employee to meet or that clearly demonstrates a substantial lack of concern for the job. Minn. Stat. § 268.095, subd. 6 (2006). Central to our analysis today, the statute excepts from the definition of misconduct "a single incident that does not have a significant adverse impact on the employer." *Id.*

Whether an employee has committed misconduct is a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). It is a question of fact whether the employee committed a particular act, and this court reviews a ULJ's fact findings in the light most favorable to her decision. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court will rely on those factual findings when they are supported by the evidence. *Id.* But whether a particular act constitutes misconduct is a question of law, which we review de novo. *Schmidgall*, 644 N.W. 2d at 804.

The ULJ found that Peterson did not take a mandatory 10-hour break, even after she received two satellite messages and a telephone warning from her supervisor

reminding her to do so. The ULJ noted that Peterson's failure to take the break put her safety and the public's safety at risk. The ULJ concluded that Peterson's actions amounted to employment misconduct.

As a general rule, an employee's knowing violation of an employer's policies, rules, or reasonable requests constitutes employment misconduct. *Montgomery v. F & M Marquette Nat'l Bank*, 384 N.W.2d 602, 604 (Minn. App. 1986), *review denied* (Minn. June 13, 1986). Peterson had worked for Transport for nearly seven years at the time of her termination, and she has worked in the trucking industry since 1980. The requirement that she take a mandatory 10-hour break within a 14-hour period was clearly delineated in Transport's employee handbook. And Peterson was reminded three times on the day of her violation that she needed to take the break. The ULJ could readily infer that Peterson intentionally violated Transport's policy and the federal law requiring that she rest.

Peterson argues that Transport shares fault for her failure to take the mandatory break because its satellite messages woke her from sleep. But Peterson could have prevented this interruption by enabling a "do not disturb" feature. And several hours after that interruption, Transport twice reminded her of her duty to take a break. Transport's interruption does not excuse Peterson's failure to take her break.

Peterson contends that she ignored her supervisor's repeated communications because she was attending to the customer, an important priority in Transport's policy. It is true that "[a]n employer's condonation of an employee's wrongful conduct is a mitigating factor which may cause the employer to waive its right to discharge the employee on the basis of such misconduct." *Bautch v. Red Owl Stores, Inc.*, 278 N.W.2d

328, 331 (Minn. 1979). But Peterson presented no evidence that Transport had ever previously instructed her to disregard the federal law in favor of serving a customer, and the argument is generally unpersuasive.

Peterson contends that her violation of the regulatory requirement constitutes a single incident that does not justify a finding of misconduct. Peterson is correct that a single act that does not have a significant adverse impact on the employer is excepted from employee misconduct. Minn. Stat. § 268.095, subd. 6(a). But violating the break requirement is not an excepted act because failing even once to follow the requirement creates a substantial safety concern with a significant adverse impact on the employer.

Recent case law supports the conclusion that Peterson's failure to follow the requirement does not qualify as an exception to employee misconduct as an isolated incident. In *Skarhus,* we held that even a single incident of a cashier's theft from her employer has a significant adverse impact on the employer, despite the small amount of the theft, because the employer could no longer entrust the employee with responsibilities necessary to carry out her duty as a cashier. *Skarhus,* 721 N.W.2d at 344. In *Frank v. Heartland Automotive Services, Inc.*, we followed *Skarhus* and held that a service manager's fraudulent charge to his employer's client constituted a single act with a significant adverse impact on his employer. 743 N.W.2d 626, 630–31 (Minn. App. 2008). In each case, we assessed the significance of the violation focusing on the employer's need to rely on the integrity of the employee rather than focusing on whether the misconduct caused some specific, immediately tangible injury to the employer. Similarly here, we reject Peterson's single-act argument in light of Transport's significant responsibility to require that its drivers always follow regulations established to protect

the lives of its drivers and those who share the highways with them. Peterson's violation by disregarding Transport's policy, her supervisor's directives, and a federal regulation requiring her to take the break constitutes a single act with a significant adverse impact on her employer. Consequently, we affirm the ULJ's determination that Peterson is disqualified from receiving unemployment benefits.

II

Peterson also argues that Transport's appeal of the department's original decision favorable to her should have been dismissed because Transport failed to timely file that appeal. Transport had thirty days to appeal the department's March 29, 2007 determination of Peterson's qualification for unemployment benefits. Thirty days from March 29, 2007, was April 28, 2007, which was a Saturday. If the 30th day falls on a weekend or holiday, the appeal must be filed by the next business day—here April 30, 2007. *See* Minn. Stat. §§ 268.033 (2006) (providing that computation of dates be governed by section 645.151); 645.151 (2006) (describing the computation of dates); 268.035, subd. 17 (2006) (defining the filing date of mailed documents as the postmark date). Transport's letter of appeal was timely postmarked April 30, 2007. Transport therefore appealed within the deadline.

Affirmed.