STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2015

Shawn C. Parker,
Relator,

vs.

RTL Networks Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed October 7, 2008
Affirmed
Halbrooks, Judge

Department of Employment and Economic Development
File No. 9855 07

Shawn C. Parker, 1937 Carroll Avenue, St. Paul, MN 55104 (pro se relator)

RTL Networks Inc., 2420 West 26th Avenue, Suite 480-D, Denver, CO 80211 (respondent)

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

Considered and decided by Halbrooks, Presiding Judge; Ross, Judge; and Schellhas, Judge.

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

HALBROOKS, Judge

Relator challenges the decision by the unemployment-law judge (ULJ) that he is disqualified from receiving unemployment benefits because he was discharged for employment misconduct. We affirm.

FACTS

Respondent RTL Networks Inc., employed relator Shawn C. Parker as a systems administrator and assigned him to work at a client's site. RTL Networks has an anti-violence policy as follows:

> Our goal is to strive to maintain a work environment free from intimidation, threats, or violent acts. This includes, but is not limited to, intimidating, threatening or hostile behaviors, physical abuse, vandalism, arson, sabotage, use of weapons, carrying weapons on to Company property, or any other act, which, in management's opinion, is inappropriate to the workplace. In addition, bizarre or offensive comments regarding violent events and/or behavior are not tolerated. Employees should directly contact proper law enforcement authorities if they believe there is a serious threat to the safety and health of themselves or others.

The ULJ found that relator was aware of this policy.

On Friday, April 20, 2007, relator and a coworker were discussing a question about the use of a new time-entry system. Although the coworker learned the answer first, he did not inform relator of what he had learned, and when relator learned of this, he became upset. As relator testified, he then told the coworker that "we should invite you to a buck knife party," which is "where we cut you long, wide, deep, and often."

The coworker reported that relator then went to his jacket, pulled out a red- or orange-colored box cutter, extended the entire razor blade, said it would not do because the blade was not long enough, retracted the blade, and put box cutter back in his coat pocket. The coworker stated that relator then remarked, "that is what a friend told me once, a buck knife party, that is where I cut you long, low, deep and wide." Although relator offered inconsistent evidence at the hearing as to whether he even had the box cutter at work, in his brief he acknowledges that the coworker probably saw him moving it to his coat pocket so that he could bring it home for the day.

There was also conflicting evidence presented as to how this incident should be characterized. Relator asserts that it was a "bad" joke and that he apologized to the coworker several times. But the coworker became frightened, told his coworkers, and reported it to the company president. He and the president discussed it on Saturday morning, and the president asked for a signed statement, which the coworker provided. The coworker asked whether he should call the police, but the president left it up to the coworker.

The president put relator on paid administrative leave while the human-resources manager interviewed relator and his coworker. The president subsequently discharged relator because his comments violated the company's anti-violence policy, regardless of whether relator had the box cutter or not.

Relator established a benefit account, and the Department of Employment and Economic Development (DEED) adjudicator ruled that relator was discharged for misconduct and is disqualified from receiving benefits. He filed an appeal, and a hearing

was held before the ULJ. The ULJ ruled that relator was discharged for misconduct and is disqualified from receiving benefits. After relator's request for reconsideration, the ULJ issued an affirmance. This certiorari appeal follows.

D E C I S I O N

> The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:
>
> (1) in violation of constitutional provisions;
>
> (2) in excess of the statutory authority or jurisdiction of the department;
>
> (3) made upon unlawful procedure;
>
> (4) affected by other error of law;
>
> (5) unsupported by substantial evidence in view of the entire record as submitted; or
>
> (6) arbitrary or capricious.

Minn. Stat. § 268.105, subd. 7(d) (2006). Substantial evidence means "(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." *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

Whether an employee was properly disqualified from receiving unemployment benefits is a question of law on which the appellate court "remains free to exercise its independent judgment." *Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 523 (Minn. 1989). But the issue of whether the employee actually committed the act that the ULJ found to be misconduct is a question of fact. *Skarhus v. Davanni's Inc.*, 721 N.W.2d

340, 344 (Minn. App. 2006). The appellate court will defer to the findings of fact and credibility determinations made by the ULJ. *Id.*; *see also Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007) (quoting *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001). The evidence will be viewed in the light most favorable to the findings. *Skarhus*, 721 N.W.2d at 344.

We first review relator's challenge to the ULJ's credibility determinations. Relator does not dispute that he told his coworker that relator should invite the coworker to a "buck knife party," where "we cut you long, wide, deep, and often." Nor does relator ultimately dispute that he had a box cutter at work, or, as he states in his brief, that the coworker may have seen it, although relator asserts this probably occurred when he was putting the box cutter in his jacket pocket to bring it home that day. Instead, his basic dispute is with the interpretation of the incident and whether it merely involved a "bad joke" or whether it was a violation of company policy constituting misconduct.

Relator first points to his testimony that he intended to make a joke with his comments, that he immediately apologized, and that the coworker was an adult male with whom he had joked in the past. He also argues that the coworker's conduct after the statement showed that he was not upset. First, the coworker stayed at his desk and discussed the incident with his friends; second, he did not call the company president "immediately"; and third, he did not call the police. Instead, relator argues that he was fired for the self-serving purposes of his employer, who wished to keep the rate of layoffs and costs of unemployment insurance low. Relator also contends that his employer

wanted to dismiss him for reasons having to do with relator's professionalism and principles, asserting that he loved his job and had no reason to throw it all away by intimidating a colleague. Further, he notes that he had no previous warning letters or reports of misconduct and in the past received a raise and letters of recommendation.

In addressing the conflicting evidence, the ULJ found the evidence presented by the employer to be more credible than relator's evidence to the contrary. First, the ULJ noted that relator's evidence was inconsistent and that he made admissions against interest that supported the employer's evidence. Next, the ULJ found that in relator's written statements to DEED, he displayed a great deal of anger and resentment toward the coworker, and in his testimony, relator admitted that he made the remarks about the buck-knife party to give the coworker "a hard time." The ULJ found unpersuasive relator's claim that if the coworker had been upset, he would have called the police.

"When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the [ULJ] must set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1(c) (2006). This court will defer to the ULJ's credibility assessment. *Skarhus*, 721 N.W.2d at 344. Here, the ULJ gave specific reasons for rejecting relator's claim that the matter was just a joke. We therefore defer to the ULJ's credibility determination.

Next, we review the determination that relator committed misconduct. An employee who is discharged for misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (Supp. 2007). Employment misconduct is any intentional, negligent, or indifferent conduct that displays either "a serious violation

of the standards of behavior the employer has the right to reasonably expect" or "a substantial lack of concern for the employment." *Id.*, subd. 6(a) (2006). "As a general rule, refusing to abide by an employer's reasonable policies and requests amounts to disqualifying misconduct." *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). "Because violent behavior interferes with the normal operation of a business, it constitutes misconduct." *Shell v. Host Int'l (Corp.)*, 513 N.W.2d 15, 17 (Minn. App. 1994).

The ULJ found that the employer has a written anti-violence policy prohibiting its employees from engaging in intimidating, threatening, or hostile behaviors or from uttering bizarre or offensive comments regarding violent events, and that relator was aware of the policy. The ULJ then stated:

> In this day and age where the news media is filled with accounts of employees shooting up their workplaces, students shooting up their schools, and terrorists threatening to blow up American cities, the threat of violence has become a hot button topic. Employers and public officials are increasingly vigilant. Any type of threatening behavior is taken seriously. [Relator]'s conduct on April 20th would cause any reasonable employee to be concerned about his or her personal safety and to wonder in the back of his or her mind what [relator] might do the next time he became upset.
>
> [Relator]'s conduct on April 20th created an atmosphere of disquiet in the workplace. His conduct was intentional and clearly showed a serious violation of the standards of behavior that RTL reasonably had the right to expect of him. At the very least, his conduct was indifferent and clearly showed a substantial lack of concern for the employment. A preponderance of the evidence supports a finding that [relator] was discharged for reasons of employment misconduct within the meaning of the Minnesota Unemployment Insurance Law.

Relator's comments violate the anti-violence policy on its face. The findings and inferences are supported by substantial evidence, and the ULJ did not err in ruling that relator engaged in misconduct.

But relator argues that his conduct falls within the statutory exception for "a single incident that does not have a significant adverse impact on the employer." Minn. Stat. § 268.095, subd. 6(a). A significant adverse impact on the employer can occur, for example, when an employer could no longer entrust the employee with the responsibilities necessary to carry out her job responsibilities as a cashier after she committed a small theft from her employer. *Skarhus*, 721 N.W.2d at 344; *see Frank v. Heartland Auto. Servs., Inc.*, 743 N.W.2d 626, 630–31 (Minn. App. 2008) (holding that fraudulent billing of customer is the "sort of integrity-measuring conduct" that always has a significant adverse impact on employer).

Relator argues that the incident had no significant adverse impact on the employer. He acknowledges that the employer had to hire another employee to replace him and that it may have lost revenue for a few weeks by not having a consultant in place. But relator compares the adverse impact on the employer to the adverse impact on him, namely, losing his job, salary, health benefits, references, and unemployment benefits.

First, the statute provides only for consideration of the adverse impact on the employer. Minn. Stat. § 268.095, subd. 6(a). Next, the ULJ found that relator's conduct created an atmosphere of disquiet in the workplace and would cause his coworkers to be concerned about their personal safety and to wonder what relator might do the next time

he was upset. Regardless of the significance of any financial loss, the threatening words that violated the company's anti-violence policy surely led the employer not to trust relator to react with his coworkers in a nonthreatening manner and maintain a nonviolent workplace. It cannot be doubted that the incident had a significant adverse impact on the employer.

Relator also argues that his conduct fell within the statutory exception to misconduct for "good faith errors in judgment if judgment was required." Minn. Stat. § 268.095, subd. 6(a). *Compare Sticha v. McDonald's No. 291*, 346 N.W.2d 138, 140 (Minn. 1984) (addressing common-law good-faith exception and holding that it applied to situation in which employee erroneously requested time off for "funeral" but attended "wake" instead), *with Ress*, 448 N.W.2d at 525 (holding that a nurse who initiated unauthorized treatment and disregarded a doctor's orders did not make a good-faith error in judgment).

Relator argues that every word he has said and written was made with complete honesty and integrity. He asserts that others at his office poked fun at each other with regard to "guns, knives, boots, and other adult themes," and that he cannot help it if a coworker "is afraid of his own shadow." In light of the ULJ's findings as to relator's comments in light of the anti-violence policy and that relator meant to give the coworker a "hard time," rather than merely making a joke, relator's good-faith argument has no merit.

Finally, relator argues that the ULJ did not bring out all of the facts at the hearing. The ULJ is to conduct the evidentiary hearing as an "evidence gathering inquiry" rather

than "an adversarial proceeding" and "must ensure that all relevant facts are clearly and fully developed." Minn. Stat. § 268.105, subd. 1(b) (Supp. 2007). The ULJ "must exercise control over the hearing procedure in a manner that protects the parties' rights to a fair hearing." Minn. R. 3310.2921. To prevail on his claim of an unfair hearing, the relator must show that his substantial rights were prejudiced because the decision was made through unlawful procedure or affected by error of law. *See Ywswf*, 726 N.W.2d at 530 (relying on Minn. Stat. § 268.105, subd. 7(d) (Supp. 2005)).

Here, relator argues that although the ULJ was trying to run a fair hearing, he was short of time and under pressure, so that there was not enough time for relator to make all the statements that he wanted to make. He contends that the ULJ presumed his guilt and censored his testimony, leaving him unable to bring the facts to light.

A portion of the hearing was taken up by the time needed to fax the employer copies of the exhibits. But the ULJ repeatedly gave both the employer and relator the opportunity to continue the hearing, which was running late, to another day. Further, at the end of the hearing, when relator complained that he had not had enough time, the ULJ again offered several times to continue the hearing and relator refused. The facts were clearly brought out, relator rejected repeated offers by the ULJ for a continuance, and the ULJ conducted the hearing in a fair and evenhanded manner.

Affirmed.