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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2059**

Jenny L. Rhoades,
Relator,

vs.

Armor Security Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed December 9, 2008
Affirmed
Stauber, Judge**

Department of Employment and Economic Development
File No. 9759 07

Jenny L. Rhoades, 426 Dillion Avenue North, Montrose, MN 55363-6300 (pro se relator)

Armor Security, Inc., 2601 Stevens Avenue, Minneapolis, MN 55408-1635 (respondent
Armor Security)

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

Considered and decided by Stoneburner, Presiding Judge; Shumaker, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

Relator challenges the decision of the unemployment law judge (ULJ) that she was discharged for misconduct, arguing that (1) the factual findings were not supported by substantial evidence; (2) her poor performance was not misconduct but attributable to inadequate training; (3) the ULJ did not provide sufficient reason for credibility determinations; and (4) she had inadequate time to prepare for the hearing. Because substantial evidence supports the ULJ's findings, the ULJ provided sufficient support for his credibility determination, and relator's conduct violated the standard of behavior that her employer had a right to reasonably expect, we affirm.

DECISION

When reviewing the decision of a ULJ, this court may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because the findings, inferences, conclusions, 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).

The ULJ determined that pro se relator Jenny L. Rhoades was disqualified from receiving unemployment benefits because she was discharged from her employment with respondent Armor Security, Inc. for employment misconduct. Whether an employee has

committed employment misconduct is a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether the employee committed a particular act is a question of fact, but whether that act constitutes employment misconduct is a question of law, which this court reviews de novo. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997).

The ULJ's factual findings are viewed in the light most favorable to the decision, *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006), and will not be disturbed when substantial evidence supports them, Minn. Stat. § 268.105, subd. 7(d)(5). Relator argues that there were seven specific areas where the findings of fact were incorrect. Review of the findings of fact and the hearing transcript reveals several minor discrepancies, but there is no clear or apparent prejudice in these minor errors that would affect the ULJ's decision. This court does not reverse findings of fact in the absence of prejudicial error. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519–520, 187 N.W.2d 133, 135 (1971). Here, the errors are harmless and the ULJ's decision is still supported by substantial evidence.

Employment misconduct is “any intentional, negligent, or indifferent conduct, on the job or off the job (1) that displays clearly a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee, or (2) that displays clearly a substantial lack of concern for the employment.” Minn. Stat. § 268.095, subd. 6(a) (2006). Relator argues that her behavior of not properly matching call slips with serviced work orders was not misconduct but simply poor performance because she was inadequately trained. Both the owner of Armor Security and a human

resources manager testified that relator received numerous verbal and written warnings about improper scheduling and inadequate adherence to procedures. Relator acknowledged that she was talked to on at least two occasions. Despite being instructed about what she was doing incorrectly, relator's performance did not improve. The ULJ found that relator had engaged in employment misconduct by failing to obey her employer's instructions and showing a substantial lack of concern for employment. An employee's refusal to abide by an employer's reasonable policies and requests is employment misconduct. *Schmidgall*, 644 N.W.2d at 804. We agree that relator's conduct rose to a level of indifference that violates the standards of conduct an employer has the right to reasonably expect.

Relator also argues that the ULJ should not have found Armor Security's witnesses' testimony more credible since relator was unable to present her own evidence and witnesses. "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 unemployment law judge must set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1(c) (2006). This court will affirm if "[t]he ULJ's findings are supported by substantial evidence and provide the statutorily required reason for her credibility determination." *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007) (setting out factors to consider in making credibility determinations). Under the factors for determining credibility set forth in *Ywswf*, the ULJ can decide if the witness was frank and direct, seemed honest and sincere, and if the testimony is reasonable compared to other evidence. *Id.* The ULJ found Armor

Security's owner and human resource manager more persuasive than relator because relator's testimony was hesitant, whereas the owner and the manager corroborated each other and described a more likely chain of events. The ULJ clearly outlined why he found respondent's witnesses to be more sincere and their testimony as more reasonable.

Relator also claims that she was given insufficient time to prepare for the hearing and was unable to subpoena witnesses. Relator did not raise this issue at or before the hearing with the ULJ, therefore, this issue is not properly before this court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) ("A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." (quotation omitted)). Furthermore, the rule for rescheduling allows requests to be made "in person, by telephone, or in writing," and absent a determination that the request is only to cause undue delay, a "hearing must be rescheduled by the [unemployment] appeals office based on a party's need for additional time to obtain necessary evidence or to obtain representation or adequately prepare." Minn. R. 3310.2908 (2007). Relator clearly had an option to request more time for the hearing, but she chose not to exercise it.

Affirmed.