

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1470**

Chun B. Wu,
Relator,

vs.

Hy-Vee Food Stores, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 18, 2009
Affirmed
Larkin, Judge**

Department of Employment and Economic Development
File No. 20714696-7

Chun B. Wu, 734 Jimmy Carter Place, Winona, MN 55987-6279 (pro se relator)

Hy-Vee Food Stores, Inc., P.O. Box 104, Lee's Summit, MO 64063-0104 (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 Larkin, Presiding Judge; Ross, Judge; and Schellhas,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Pro se relator challenges an unemployment-law judge's determination that he was discharged for employment misconduct and, therefore, ineligible for unemployment benefits, arguing that (1) the testimony of relator's supervisor was not credible; (2) relator was denied training; (3) the determination is based upon certain improperly considered evidence; (4) relator was discriminated against; and (5) relator was unable to understand the proceedings due to his difficulty understanding English. Because we conclude that relator was discharged for employment misconduct and that relator's arguments are unpersuasive, we affirm.

FACTS

Relator Chun B. Wu worked fulltime for respondent Hy-Vee Food Stores, Inc. from December 23, 2006 until March 14, 2008 as the manager of a cafeteria located in a grocery store. On February 29, 2008, a customer complained that Wu refused to prepare orange chicken when she requested it. Hy-Vee provided Wu with a written warning for not serving the customer orange chicken as requested. The warning states that Wu must make food to order if none is available in the serving case and that "any other incidents of not taking care of the customer . . . may result in termination." On March 6, Hy-Vee received another complaint that Wu refused to prepare food in response to a customer's request. Hy-Vee provided Wu with a second written warning stating that the receipt of one more verified complaint of Wu refusing to prepare food upon a customer's request could result in termination of Wu's employment.

On March 12, a customer requested fried rice. Wu served the customer steamed rice with soy sauce. The customer complained to Wu's supervisor, Brad Walters. Walters confronted Wu. Wu insisted that the steamed rice was fried rice. Also on March 12, a customer requested a "bucket" of sweet and sour sauce. Wu told the customer that he could not provide her with sweet and sour sauce at that time but that he would give it to her the next day. The customer complained to a cashier who told Walters. Hy-Vee discharged Wu on March 14 based on the events described above.

Wu established a benefit account with the Minnesota Department of Employment and Economic Development (DEED). A DEED adjudicator initially determined that Wu was discharged for reasons of employment misconduct and held him ineligible for unemployment benefits. Wu appealed that determination, and an evidentiary hearing occurred on May 23 before an unemployment-law judge (ULJ). The ULJ concluded that "[t]he preponderance of the evidence shows that Wu tried to serve the customer steamed rice with soy sauce when the customer ordered fried rice . . . [and] Wu had no explanation for failing to offer the customer the packets of sweet and sour sauce." The ULJ also concluded that Wu's repeated refusals to provide the customer service required by his job are violations of standards of behavior that Hy-Vee has the right to expect and displayed a substantial lack of concern for employment. The ULJ determined that Wu was discharged for employment misconduct and is, therefore, ineligible for unemployment benefits. Wu requested reconsideration, and the ULJ affirmed his findings and decision. This certiorari appeal follows.

DECISION

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 defined as

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.

Inefficiency, inadvertence, simple unsatisfactory conduct, a single incident that does not have a significant adverse impact on the employer, . . . or absence because of illness or injury with proper notice to the employer, are not employment misconduct.

Id., subd. 6(a) (Supp. 2007).

“Whether an employee committed misconduct is a mixed question of fact and law.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). “Whether the employee committed a particular act is a question of fact.” *Id.* This court views the ULJ’s factual findings in the light most favorable to the decision and will not disturb factual findings that are supported by substantial evidence. *Id.* This court defers to the ULJ’s conclusions regarding conflicts in testimony and the inferences to be drawn from testimony. *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007). Whether an employee’s act constitutes disqualifying misconduct is a question of law, which we review de novo. *Schmidgall*, 644 N.W.2d at 804.

The record contains evidence that Wu was warned that he must make food to order upon request and that refusing to prepare food in response to a customer's request could result in termination. Walters testified that after these warnings, Wu refused to provide customers with the food they requested and was then "terminated for poor customer service." The ULJ found Walter's testimony credible, and we must defer to this credibility determination. *See Skarhus*, 721 N.W.2d at 344 (stating that we defer to the ULJ's credibility determinations).

An employer has a right to expect that its employees will abide by reasonable policies and procedures. *McGowan v. Executive Exp. Transp. Enter., Inc.*, 420 N.W.2d 592, 596 (Minn. 1988). Furthermore, an employee's intentional refusal to perform a task is misconduct. *See, e.g., Bibeau v. Resistance Tech., Inc.*, 411 N.W.2d 29, 32 (Minn. App. 1987) (upholding disqualification from unemployment benefits when employee deliberately chose to disobey employer's instructions to make quality checks because employee believed that the instruction was "stupid"). Thus, the ULJ did not err in concluding that Wu's repeated refusals to provide the customer service required by his job were violations of the standards of behavior Hy-Vee had the right to expect and displayed a substantial lack of concern for employment.

Wu extensively argues that Walters's testimony regarding the fried-rice incident was inaccurate. But the ULJ found Wu's testimony to be filled with inconsistencies and that Walters's testimony "describes a more likely chain of events" and is "more persuasive than Wu's testimony." This court defers to the ULJ's conclusions regarding conflicts in testimony. *Ywswf*, 726 N.W.2d at 529.

Wu contends that he was unfairly denied training, but he makes no argument explaining how his purported lack of training impacts our review of the ULJ's determination. This court generally declines to reach issues in the absence of adequate briefing. *See State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997). Because Wu cites no legal authority and provides no analysis, this issue is waived for inadequate briefing. *Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994).

Wu contends that the ULJ improperly relied on certain evidence. Specifically, Wu objects to the ULJ's receipt of Hy-Vee's "Consultation Forms," which document the customer complaints against Wu. An evidentiary hearing is "not an adversarial proceeding," and the ULJ "must ensure that all relevant facts are clearly and fully developed." Minn. Stat. § 268.105, subd. 1(b) (Supp. 2007). DEED promulgates its own evidentiary-hearing rules, and these rules do not have to "conform to common law or statutory rules of evidence and other technical rules of procedure." *Id.* Thus, "[a]ll competent, relevant, and material evidence" may be considered as part of the record. Minn. R. 3310.2922 (2007). Furthermore, "[a] judge 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." *Id.* The "Consultation Forms" were probative because they demonstrate that Wu was warned that his refusal to provide customers with requested food items could result in his discharge. Wu testified that he received a written warning, and Walters

testified regarding the events described in the documents. The “Consultation Forms” were not improperly considered.

Wu makes vague arguments related to a discrimination claim throughout his pro se brief without citing to legal authority or providing any analysis. We decline to reach this issue for lack of briefing. *Ganguli*, 512 N.W.2d at 919 n.1. Moreover, the record does not support a claim of discrimination.

Wu contends that he could not fully participate in the evidentiary hearing because of his inability to understand English. DEED is required to provide an interpreter “when necessary, upon the request of a party.” Minn. R. 3310.2911 (2007). If a party does not request an interpreter, the ULJ must “continue any hearing where a witness or principal party in interest is a handicapped person so that an interpreter can be appointed.” *Id.* Wu had an interpreter at the May 23 evidentiary hearing. Furthermore, the record indicates that (1) Wu initially wanted to proceed without an interpreter; (2) the hearing was delayed so that an interpreter could be provided; and (3) the transcript of Wu’s testimony shows that Wu fully participated in the hearing.

Wu has not advanced a persuasive argument for reversal. The ULJ correctly determined that Wu was discharged for employment misconduct and ineligible for benefits. Accordingly, we affirm.

Affirmed.

Dated: _____

The Honorable Michelle A. Larkin