STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1395

In the Matter of the Appeal of the
Determination of the Responsible Authority for the
South Washington County Schools (ISD #833) that
Certain Data about Loren Lorenz are Accurate and/or Complete.

Filed August 7, 2017
Affirmed in part, reversed in part, and remanded
Halbrooks, Judge

State of Minnesota Administration Department
OAH Docket No. 65-0205-32378

Loren L. Lorenz, Hastings, Minnesota (pro se relator)

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Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and Klaphake, Judge.*

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

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

HALBROOKS, Judge

In this certiorari appeal, relator argues that the commissioner of administration erred by dismissing his data-practices-act challenge to the accuracy and completeness of certain information contained in an April 16, 2014 termination letter maintained by respondent former employer. We affirm in part, reverse in part, and remand for modification of the termination letter as described in section II.B of this decision.

FACTS

Relator Loren Lorenz was employed as a bus driver for respondent South Washington County School District (the district) from September 2008 through April 16, 2014. Lorenz knew that bus drivers must, "[f]ollow[] the policies and procedures in accordance with the South Washington County Transportation Department Handbook" (the handbook), and understood that the handbook required him to "immediately report all crashes [defined as 'any time [a] bus makes contact with any object'], however slight, to the management of transportation."

Lorenz was involved in two crashes while driving a school bus for the district. On December 19, 2013, Lorenz's bus made contact with the bumper of a car in a busy intersection at about 3:20 p.m. Lorenz informed management about the crash by e-mail at 5:52 p.m. that afternoon. On January 9, 2014, Lorenz met with Carrie Olson, the district's assistant director of transportation, and Ronald Meyer, the district's director of transportation services, to discuss Lorenz's failure to report the accident according to department procedures. The district court issued Lorenz a written reprimand and

suspended him without pay for three days. In addition, the reprimand advised him that future failure to comply with department policies and federal, state, and local laws would result in further disciplinary action, including termination.

On April 2, 2014, while driving an empty bus at approximately 4:00 p.m., Lorenz scraped a guardrail as he tried to pass a stopped vehicle. Lorenz informed management of that crash by e-mail at approximately 12:55 a.m. on April 3. On April 11, Lorenz met again with Olson and Meyer to discuss the April 2 crash. During the meeting, Meyer told Lorenz that his employment might be terminated because of his failure to immediately report the crash. Following the meeting, Meyer and Olson decided to terminate Lorenz's employment. Olson drafted a termination letter, and Meyer reviewed the letter before presenting it to Lorenz.

Olson and Meyer again met with Lorenz on April 16 and gave Lorenz the termination letter. The letter informed Lorenz that he was immediately terminated from his employment with the district and stated in relevant part that (1) Lorenz engaged in "conduct unbecoming an employee"; (2) "during [the] meeting on April 11, 2014, [he] became belligerent, disrespectful and made threatening remarks to [Meyer]"; and (3) his "continued pattern of gross insubordination . . . has caused undue disruption to the district." Lorenz accepted the letter but left the office before Meyer could finish reading the letter aloud to him.

On or about July 25, Lorenz sent a letter to the district's human-resources director, requesting that the district remove the termination letter from his personnel file pursuant the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. § 13.04, subd. 4

(2016), and Minn. R. 1205.1600 (2015). When the district did not respond to his letter, Lorenz filed an appeal with the commissioner of the Minnesota Department of Administration, again requesting that the termination letter be removed from his file. A representative from the Information Policy Analysis Division (IPAD) of the department of administration responded to Lorenz's request for an appeal, explaining that the commissioner could not accept it without more information. The IPAD representative explained that his request must be addressed to the school superintendent because "[t]he school superintendent is the 'responsible authority' for your data request, not the Human Resources department."

In a letter addressed to the school superintendent, Lorenz asked that the termination letter be removed from his human-resources file pursuant to Minn. Stat. §§ 13.04, 181.962 (2016), and Minn. R. 1205.1600. The district responded to Lorenz, denying his request, stating that "[t]he District believes that the data contained in these two letters is accurate, and was fully supported by a preponderance of the evidence."

After a hearing, an administrative-law judge (ALJ) issued a recommendation that the district reverse the decision denying Lorenz's challenge to the termination letter. The ALJ determined that Lorenz had "established by a preponderance of the evidence that" the challenged statements and conclusions contained in the termination letter are not accurate and/or complete as defined in Minn. R. 1205.1500, subp. 2. Based on these determinations, the ALJ recommended that the commissioner order the district to remove the challenged statements from the termination letter.

Lorenz petitioned the department of administration for reimbursement of expenses associated with his MGDPA action. The ALJ denied Lorenz's petition. The commissioner issued a final decision on August 19, concluding that, "After reviewing the record, the Director[1] finds that there is insufficient evidence to support the ALJ's conclusion that Lorenz proved by a preponderance of the evidence that the challenged statements within the April 16, 2014, Termination Letter are inaccurate or incomplete." Based on this conclusion of law, the commissioner ordered that "all challenges by . . . Lorenz to the accuracy and completeness of data about him contained within the [termination letter] . . . maintained by [the district] are DISMISSED." This appeal follows.

D E C I S I O N

Lorenz argues that the commissioner's decision that the challenged statements in the termination letter are accurate and complete is not supported by substantial evidence or is arbitrary or capricious. This court may reverse or modify a final decision on an MGDPA complaint if the substantial rights of the petitioner may have been prejudiced because the administrative findings, inferences, conclusion, or decision are, in relevant part, affected by an error of law or unsupported by substantial evidence. Minn. Stat. § 14.69(d), (e) (2016).

This court "must defer to an agency's decision so long as it is reasonable and supported by substantial evidence, and [this court] may not substitute [its] judgment for

[1] The final order was written by the director of IPAD, under delegated authority from the commissioner of the department of administration. As a result, this decision is referred to as a decision by the commissioner throughout this opinion.

that of the agency." *In re A.D.*, 883 N.W.2d 251, 259 (Minn. 2016). "The substantial-evidence standard addresses the reasonableness of what the agency did on the basis of the evidence before it." *Id.* (quotation omitted). "[A] substantial basis in the record to support an agency's determination exists where, considering the evidence in its entirety, there is relevant evidence that a reasonable person would accept as adequate to support a conclusion." *Id.*

Interpretation of the MGDPA presents a question of law subject to de novo review. *KSTP-TV v. Metro. Council*, 884 N.W.2d 342, 345 (Minn. 2016). The MGDPA provides that "[a]n individual subject of the data may contest the accuracy or completeness of public or private data." Minn. Stat. § 13.04, subd. 4(a). Under the MGDPA, "accurate" means the "data in question is reasonably correct and free from error," and "complete" means "that the data in question reasonably reflects the history of an individual's transactions with the particular entity." Minn. R. 1205.1500, subp. 2.A, B (2015). "Omissions in an individual's history that place the individual in a false light shall not be permitted." *Id.*, subp. 2.B.

"[A] subjective assessment that, standing alone, is not objectively verifiable" can be contested under the MGDPA when "the stated basis for the subjective assessment . . . is a verifiable, falsifiable statement of fact." *Schwanke v. Minn. Dep't of Admin.*, 851 N.W.2d 591, 594 (Minn. 2014). A verifiable, falsifiable statement of fact "is capable of being proven true or false." *Id.* at 595. But "mere dissatisfaction with a subjective judgment or opinion cannot support a challenge under the [MGDPA]." *Id.*

I.

Lorenz challenges the basis underlying the commissioner's decision, arguing that the commissioner erred by using an incorrect definition of substantial evidence. When deciding an appeal regarding a challenge to the accuracy and completeness of data pursuant to the MGDPA, the commissioner is required to make an independent examination of the record by applying the substantial-evidence test. *See In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 274 (Minn. 2001). Quoting *Urban Council on Mobility v. Minn. Dep't of Nat. Res.*, 289 N.W.2d 729, 733 (Minn. 1980), the commissioner defined "substantial evidence" as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." The commissioner also cited *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 825 (Minn. 1977), and *Hennepin Cty. Cmty. Servs. Dep't v. Hale*, 470 N.W.2d 159, 163 (Minn. App. 1991), which describe "substantial evidence" as (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'"; and (5) "evidence considered in its entirety."

Lorenz contends that the commissioner's definition is incorrect because the exact wording quoted is found in only one of the three cases cited, and there was no explanation regarding why the commissioner "chose to ignore the five-part definition." The fact that the commissioner cited two cases listing the five-part substantial-evidence definition demonstrates that the commissioner did not ignore that definition. Lorenz does not articulate the precise legal significance of the four phrases in the five-part definition that

were omitted from the commissioner's quoted definition or explain how the omission makes the commissioner's definition substantially different. Finally, Lorenz provides no authority supporting his assertion that the failure to include the other four parts of the substantial-evidence definition makes the commissioner's definition incorrect. This argument is without merit.

II.

Lorenz asserts that the commissioner erred by dismissing his MGDPA challenge because the commissioner's determination that the challenged statements are neither accurate nor complete is not supported by substantial evidence. Lorenz argues that there were "serious contradictions" in the district's evidence that "taken in its entirety, cannot pass the test of . . . a 'reasonable mind'" in the commissioner's substantial-evidence definition. But we do not resolve conflicts in evidence. We instead defer to an agency's credibility determinations and conclusions about conflicts in evidence so long as the conclusions are supported by substantial evidence. *See Blue Cross*, 624 N.W.2d at 278 (stating that appellate courts "defer to an agency's conclusions regarding conflicts in testimony . . . and the inferences to be drawn from testimony").

A.

Lorenz first focuses on the reference in the termination letter that characterized his behavior as "conduct unbecoming an employee," arguing that the characterization is not accurate or complete because the facts that form the basis for this characterization are not supported by substantial evidence in the record. Olson testified that she based her opinion that Lorenz demonstrated conduct unbecoming an employee on his behavior at the April

11 meeting, including "standing up, pointing his finger, raising his voice, and leaving the meeting." Meyer testified that Lorenz engaged in conduct unbecoming an employee based on the fact that Lorenz did not timely report crashes involving his school bus on two occasions and because Lorenz "raised his voice, pointed his finger, and stated an intention to seek legal counsel" during the April 11 meeting.[2]

The commissioner concluded that, "[t]he objectively verifiable basis for Olson's and Meyer's opinions [that Lorenz engaged in conduct unbecoming an employee] is not 'capable of being proved false' because it is supported by the record." The commissioner adopted the ALJ's finding of fact #15, which states:

> In response to Meyer's statement about termination, Lorenz stood up, pointed his finger at Meyer, and expressed his intention to seek legal counsel if the School District intended to terminate his employment. Lorenz also commented that Meyer did not treat women in the Department fairly and that Meyer was likely retaliating against Lorenz for a report Lorenz made to the State Patrol.

Lorenz testified at the hearing that he did not stand up at the April 11 meeting, point his finger, or comment that Meyer did not treat women fairly. As a result, the ALJ, as fact-finder, was required to resolve the conflict in the testimony based on a credibility determination. The ALJ resolved the conflict between the testimony of Meyer and Lorenz by crediting Meyer's account of what happened. Because the record contains sufficient relevant evidence for a reasonable mind to accept the commissioner's conclusion that the

[2] Lorenz does not deny that he failed to immediately report two crashes involving his school bus as required by district policy.

challenged statement is accurate and complete, we conclude that the commissioner did not err by determining that this statement is accurate and complete as required by the MGDPA.

B.

Lorenz also focuses on the accuracy of the statement in the termination letter that Lorenz "became belligerent, disrespectful and made threatening remarks to [Meyer]." The ALJ stated in conclusion #20 of his order:

> [Lorenz] . . . established by a preponderance of the evidence that the statement . . . that [Lorenz] "became belligerent, disrespectful and made threatening remarks to [Meyer]" is not accurate and is not complete, as those terms are defined in Minn. R. 1205.1500, subp. 2. Based upon the evidence presented at hearing, the statement is not reasonably correct and does not conform to fact. Moreover, the statement places [Lorenz]'s words and actions on April 11, 2014, in a false light.

Upon review, the commissioner concluded that the ALJ's conclusion of law #20 is "not supported by the record" because "[a]fter reviewing the record . . . there is insufficient evidence to support the ALJ's conclusion." Because we conclude that the record contains sufficient evidence to support a portion of the challenged statement, we examine the elements of the challenged statement separately.

Belligerent and disrespectful

Olson testified that the "belligerent [and] disrespectful" description in the termination letter was based on Lorenz's comment about Meyer not treating women fairly and his general tone of voice. Meyer testified that he characterized Lorenz's conduct as belligerent and disrespectful because Lorenz stood up during the meeting, raised his voice, pointed his finger, and expressed an intent to seek legal advice. We conclude that the

record, when considered in its entirety, provides sufficient relevant evidence to support a reasonable person's conclusion that Lorenz became belligerent and disrespectful during the April 11 meeting. The commissioner therefore did not err by concluding that this language in the termination letter describing his behavior in the meeting as belligerent and disrespectful is accurate.

Made threatening remarks to Meyer

But Lorenz also contends that the commissioner erred by determining that the statement that Lorenz "made threatening remarks to [Meyer]" during the April 11 meeting is accurate and complete because there is no evidence that he engaged in physically threatening behavior. Citing *Schwanke*, 851 N.W.2d at 595, the commissioner concluded that Lorenz's complaint about the statement that he "made threatening remarks to [Meyer]," "amounts to nothing more than 'mere dissatisfaction' with subjective data, which is insufficient to sustain a challenge under section 13.04 and must be dismissed as a matter of law." We disagree.

The statement that Lorenz "made threatening remarks to [Meyer]" is a factual statement that is capable of being proved false, i.e., "falsifiable" under *Schwanke*. *See Schwanke*, 851 N.W.2d at 595. To determine the truth or falsity of the statement, it is necessary to define what a threat is. A threat is defined as: (1) "A communicated intent to inflict harm or loss on another or on another's property"; (2) "An indication of an approaching menace"; or (3) "A person or thing that might well cause harm." *Black's Law Dictionary* 1708-09 (10th ed. 2014). *The American Heritage College Dictionary* 1411 (3d ed. 2000) defines "threat" as (1) "[a]n expression of an intention to inflict pain, injury, evil,

or punishment"; (2) "[a]n indication of impending danger or harm"; or (3) "[o]ne that is regarded as a possible danger, a menace." Based on the dictionary definitions, we conclude that a prospective employer would reasonably interpret the termination letter to mean that Lorenz threatened to inflict pain, injury, or harm to Meyer. If that statement is not accurate, it has the potential to adversely and unfairly impact Lorenz's efforts to find another job.

The parties do not seem to dispute the underlying factual basis for the statement that Lorenz "made threatening remarks to [Meyer]." According to Meyer, Lorenz threatened to "hire an attorney" and "move forward with an attorney towards the District" in a way that Meyer found threatening "not just in the language that was used, but in the anger that [Lorenz] presented the information." Meyer testified that he recalled Lorenz "standing up, pointing . . . and saying . . . [h]e was not going to allow me to move forward and that, if we did move forward with termination, that he would hire an attorney and . . . move forward with an attorney towards the District." Meyer explained that, "[t]o me, that felt like a threatening demeanor and language that he used." Olson stated that, "the threatening [remarks] were more the actions, the motions, pointing at [Meyer], yelling at [Meyer]."

Lorenz's threat was that he would hire an attorney, not that he would physically harm Meyer or Olson. We therefore conclude that the statement in the termination letter, that Lorenz "made threatening remarks to [Meyer]," is not accurate or complete as those terms are defined in Minn. R. 1205.1500, subp. 2, because it places Lorenz's words and actions on April 11 in a false light. The commissioner's conclusion that the statement in Lorenz's termination letter that he "made threatening remarks to [Meyer]" is not supported by the record.

Because the statement, "made threatening remarks to [Meyer]," is not accurate, we direct the district to delete that language from Lorenz's termination letter or correct it by amending it to state that Lorenz threatened to hire an attorney. When amended, the termination letter will no longer give a reader the inaccurate impression that Lorenz threatened to inflict pain, injury, or harm on Meyer.

C.

Lorenz argues that the commissioner erred by concluding that the term "gross insubordination" in the termination letter is accurate or complete because the commissioner used an improper definition of insubordination since the commissioner omitted the phrase "'a refusal to obey an order that a superior officer is authorized to give.'" We disagree. "Insubordination" is defined as (1) "[a] willful disregard of an employer's instructions, esp. behavior that gives the employer cause to terminate a worker's employment" and (2) "[a]n act of disobedience to proper authority; esp., a refusal to obey an order that a superior officer is authorized to give." *Black's Law Dictionary* 919 (10th ed. 2014).

The commissioner defined insubordination as "[a] willful disregard for an employer's instructions, esp. behavior that gives the employer cause to terminate a worker's employment." We conclude that the definition used by the commissioner is appropriate because the stated factual basis for Lorenz's "gross insubordination" is Lorenz's failure to follow the policy and procedures in the handbook requiring him to immediately report any crash with his school bus. Lorenz was issued a written reprimand and suspended for three days without pay on January 10, 2014 for failing to immediately report the December 19, 2013 crash. The written reprimand required Lorenz to "follow

the policies and procedures set forth in the [handbook]," and warned Lorenz that "failure to comply with this directive will result in further disciplinary actions, up to and including termination." Lorenz disobeyed both the handbook requirement to report the crash immediately and the direct instruction from his superior when he did not immediately report the second crash. Lorenz's argument that the commissioner erred in concluding that the term "gross insubordination" in the termination letter is unpersuasive and therefore fails.

Lorenz also appears to argue that the commissioner was biased in favor of the district because he showed "an unexplained interest in a minor and irrelevant topic that favored" the district by mentioning three times that Lorenz's e-mails reporting the crashes "were sent 'hours' after the two incidents" when "[t]here was no legitimate reason for the [commissioner's] 'hours' emphasis."

The commissioner's reference to the e-mails being sent "hours" after the crashes occurred goes directly to the basis for concluding that there was insubordination. District policy required that crashes be reported "immediately" over the radio. Immediately has two dictionary definitions, (1) "[w]ithout delay," and (2) "[w]ith no intermediary; directly." *The American Heritage College Dictionary* 679 (3d ed. 2000). The record contains substantial evidence that Lorenz admitted that he returned the bus and went home before reporting either crash. There was a significant interval of time in both cases before Lorenz

reported the crashes. The commissioner's reference to "hours" is relevant to the district's requirement that drivers immediately report crashes and is not indicative of bias.[3]

Affirmed in part, reversed in part, and remanded.

[3] We decline to consider Lorenz's First Amendment and whistleblower claims because they were not addressed by the commissioner and are not properly within the scope of a MGDPA challenge. *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 [district] court in deciding the matter before it." (quotation omitted)). And we decline to consider Lorenz's argument about an award of damages or expenses because this argument was inadequately briefed and unsupported by legal analysis or citation. *Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994); *see also State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (explaining that appellate courts decline to reach an issue in absence of adequate briefing).