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STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1726

James Treptau,
Relator,

vs.

Federal Cartridge Co. (Corp.),
Respondent,

Department of Employment and
Economic Development,
Respondent.

Filed June 12, 2017
Affirmed
Johnson, Judge

Department of Employment and
Economic Development
File No. 34652098-3

James Treptau, Buffalo, Minnesota (*pro se* relator)

Federal Cartridge Co. (Corp.), c/o ADP-UCM/The Frick Co., St. Louis, Missouri (respondent employer)

Lee B. Nelson, Keri A. Phillips, St. Paul, Minnesota (for respondent department)

Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and Johnson, Judge.

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

JOHNSON, Judge

An unemployment-law judge determined that James Treptau is ineligible for unemployment benefits because he was discharged from employment for engaging in misconduct. We affirm.

FACTS

Treptau worked full-time for Federal Cartridge Company as a manufacturing machine operator from March 21, 2013, to May 5, 2016. He operated three types of machines: a packer, a sleever, and a machine known as the "Bemis."

In December 2014, Federal Cartridge posted a safety alert that directed employees to refrain from using Allen wrenches or other tools to cause the start button on the packer machine to remain depressed. In March 2015, Federal Cartridge suspended Treptau from employment because he inserted an Allen wrench into the start-button housing on a packer machine, thereby causing "an unsafe work condition." Treptau was reinstated to employment four days later. As a condition of his reinstatement, Treptau agreed that he would "read and understand the company policies" in the employee handbook and that he would comply with the company's safety policies.

In April 2016, Treptau again was suspended from employment for violating a safety policy, this time because he bypassed safety protocols by using tape on the start/stop button of the Bemis, which caused the button to remain depressed. Two weeks later, Federal Cartridge terminated Treptau's employment.

In May 2016, Treptau applied for unemployment benefits. The department of employment and economic development (DEED) made an initial determination that Treptau was ineligible for unemployment benefits because he had been discharged for misconduct. Treptau pursued an administrative appeal of the initial determination.

In August 2016, an unemployment-law judge (ULJ) held an evidentiary hearing. Stephen Krippner, a Federal Cartridge human-resources generalist, testified that Treptau was terminated because he violated a company safety policy by taping down the start/stop button on the Bemis machine and leaving the tape on the machine at the end of his shift. Krippner testified that Treptau admitted to taping down the start/stop button. He also testified that Treptau's use of tape on the Bemis was similar to his use of the Allen wrench on the packer. Krippner explained that the Bemis machine is equipped with doors to keep employees' hands away from the machine's moving parts. Krippner also explained that the Bemis machine will operate only if the start/stop button is depressed. Krippner further explained that the start/stop button will automatically pop up if the doors are opened. But if the start/stop button has been taped down, the machine will not stop operating when the doors are opened. Thus, an employee such as Treptau who reaches a hand inside the doors could be injured, and an employee who is unaware that the start/stop button has been taped down could unexpectedly discover that the machine continues to operate after the doors are opened.

In his own testimony, Treptau said that he taped down the start/stop button on the Bemis in order to keep the machine from "stall[ing] out" and requiring him to manually depress the start/stop button every time he wanted the machine to restart, which he said

was "a huge waste of time." Treptau testified that he did not believe that he created a safety hazard. He also explained how the Bemis is different from the packer and that the warning he received regarding the packer did not apply to the Bemis.

In August 2016, the ULJ found that Treptau is ineligible for unemployment benefits because he "violated the standards of behavior the employer had the right to reasonably expect [which] amounted to employment misconduct" when he taped down the start/stop button on the Bemis. Treptau requested reconsideration, which the ULJ denied. Treptau appeals.

D E C I S I O N

We construe Treptau's *pro se* brief to make two arguments.

I. Finding of Misconduct

Treptau argues that the ULJ erred by finding that he was terminated from his employment for engaging in employment misconduct.

This court reviews a ULJ's decision denying unemployment benefits to determine whether the findings, inferences, conclusions, or decision are unlawful or in excess of the ULJ's authority, unsupported by substantial evidence, or arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d) (2016). We review the ULJ's findings of fact "in the light most favorable to the decision" to determine whether "there is evidence in the record that reasonably tends to sustain them." *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted). We apply a *de novo* standard of review to the question whether an employee's conduct "disqualifies the employee from unemployment benefits," which "is a mixed question of fact and law." *Id.* (quotation omitted). "Whether the

employee committed a particular act is a question of fact." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Unemployment benefits are intended to provide financial assistance to workers who have been discharged from employment "through no fault of their own." *Stagg*, 796 N.W.2d at 315 (quotation omitted). Accordingly, a worker who was discharged due to "employment misconduct" is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4 (2016); *Stagg*, 796 N.W.2d at 315-16. "Employment misconduct" is defined as

> any intentional, negligent, or indifferent conduct, on the job or off the job that displays clearly:
>
> (1) a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee; or
>
> (2) a substantial lack of concern for the employment.

Minn. Stat. § 268.095, subd. 6(a) (2016). This statutory definition is exclusive such that "no other definition applies." *Id.*, subd. 6(e); *see also Wilson v. Mortgage Resource Ctr., Inc.*, 888 N.W.2d 452, 456-60 (Minn. 2016).

In this case, the ULJ determined that Treptau committed a serious violation of Federal Cartridge's reasonable expectations of its employees' standards of behavior by intentionally bypassing a safety mechanism on the Bemis. The ULJ also found that Treptau "show[ed] a substantial lack of concern for the employment" by engaging in that conduct after receiving notice that such conduct is prohibited. The ULJ found that Treptau knew or should have known that Federal Cartridge "expected him to use machinery in the manner in which it was designed, not in a manner that Treptau felt was sufficiently safe."

Furthermore, the ULJ found Treptau to be "disingenuous" in testifying that he had no reason to know that taping down the Bemis's start/stop button violated a company safety policy.

Treptau contends that the ULJ erred for three reasons. First, he contends that the ULJ did not consider Treptau's subjective intent when he taped down the start/stop button on the Bemis, which he contends shows that he did not knowingly violate Federal Cartridge's safety policy. Treptau's contention is inconsistent with the caselaw, which provides that whether an employee's conduct constitutes a "serious violation" of an employer's reasonable expectations is an objective determination, "not a subjective one." *Wilson*, 888 N.W.2d at 459 (citing *Jenkins v. American Express Fin. Corp.*, 721 N.W.2d 286, 290 (Minn. 2006)). As DEED contends, the caselaw on which Treptau relies has been abrogated by an amendment to the unemployment-benefits statute. *See Fujan v. Ruffridge-Johnson Equip.*, 535 N.W.2d 393 (Minn. App. 1995), *abrogated by* Minn. Stat. § 268.09, subd. 12 (Supp. 1997) (codifying exclusive definition of employment misconduct); *Shell v. Host Int'l*, 513 N.W.2d 15 (Minn. App. 1994) (same); *Norman v. Campbell-Logan Bindery, Inc.*, 376 N.W.2d 723 (Minn. App. 1985) (same).

Second, Treptau contends that he did not engage in misconduct because his conduct did not result in any harm. As a matter of law, it is irrelevant whether his conduct caused any harm. *See Peterson v. Northwest Airlines Inc.*, 753 N.W.2d 771, 776 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008) (stating that ULJ need not find actual harm resulting from relator's misconduct); *Sivertson v. Sims Security, Inc.*, 390 N.W.2d 868, 871 (Minn. App. 1986), *review denied* (Minn. Aug. 20, 1986) (same).

Third, Treptau contends that the ULJ's determination is not supported by substantial evidence. In fact, there is abundant evidence to support the ULJ's finding that Treptau engaged in misconduct. The evidence shows that the company's handbook provides that safety-policy violations may result in termination, that Treptau previously used a tool to keep a packer machine's start button depressed, was disciplined and warned, acknowledged that he would not repeat his conduct, and then engaged in the same type of unsafe conduct again with respect to the Bemis.

Thus, the ULJ did not err by finding that Treptau engaged in misconduct.

II. Fairness of Hearing

Treptau also argues that, for four reasons, the ULJ erred by not providing him with a fair hearing.

First, Treptau contends that the ULJ would not allow him to introduce as an exhibit a letter written by a co-worker concerning Treptau's good character. A ULJ is required to "assist all parties in the presentation of evidence" and to "ensure that all relevant facts are clearly and fully developed." Minn. R. 3310.2921 (2014). The ULJ asked Treptau at the beginning of the hearing whether he had additional documents to submit. Treptau answered in the negative. Later in the hearing, Treptau read the entirety of the letter into the record, without objection or interruption. Thus, the ULJ did not fail to assist Treptau in presenting evidence or in ensuring that the record was fully developed.

Second, Treptau contends that the ULJ did not assist him in rescheduling the hearing to give him an opportunity to subpoena witnesses. The applicable administrative rule provides, "A hearing may be rescheduled only once by each party except in the case of an

emergency." Minn. R. 3310.2908, subp. 1 (2014). Treptau's hearing was rescheduled to allow him to subpoena witnesses. At the beginning of the hearing, the ULJ asked Treptau whether he would call any witnesses. Treptau responded in the negative but said that he "could get some." The ULJ reminded Treptau that the hearing already had been rescheduled once. Treptau then said that he did not want to reschedule the hearing again. Thus, the ULJ did not deprive Treptau of an opportunity to subpoena witnesses.

Third, Treptau contends that the ULJ prevented him from presenting certain testimony about the Bemis's functionality. During Krippner's testimony, Treptau objected and disputed Krippner's testimony about the Bemis's functionality. The ULJ interrupted Treptau and informed him that he would have an opportunity later in the hearing to provide his own testimony. Treptau later testified at length on the issue. Thus, the ULJ did not prevent Treptau from presenting evidence about the Bemis's functionality.

Fourth, Treptau contends that the ULJ should not have relied on an exhibit offered by DEED that Treptau had not seen before the hearing. Any exhibits relied on by a party in a hearing before a ULJ must be disclosed to the opposing party by mail or electronic transmission "in advance of the hearing." Minn. R. 3310.2912 (2014). The record indicates that Treptau had notice of DEED's exhibits before the hearing. At the beginning of the hearing, the ULJ asked Treptau whether he had any objection to marking the exhibit in question and making it part of the record. Treptau did not object. Thus, the ULJ did not err by relying on the exhibit.

Therefore, the ULJ did not deprive Treptau of a fair hearing.

Affirmed.