STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0103

Scott Souter,
Relator,

vs.

Fastenal Company, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed November 13, 2017
Affirmed in part and reversed in part
Larkin, Judge

Department of Employment and Economic Development
File No. 34794072-3

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Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Johnson, Judge.

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

LARKIN, Judge

Relator challenges an unemployment-law judge's (ULJ) determination that he is ineligible for unemployment benefits, which was based on the ULJ's conclusion that relator's arrest for driving while impaired (DWI) within 13 months of his previous DWI arrest and conviction constituted employment misconduct and aggravated employment misconduct. Relator also challenges the ULJ's denial of his subpoena request. Because the record does not support the ULJ's aggravated-misconduct determination, we reverse in part. But because relator's second DWI arrest constitutes employment misconduct and the ULJ did not abuse his discretion by denying relator's subpoena request, we affirm the ULJ's ineligibility determination.

FACTS

Relator Scott Souter began working at Fastenal Company, Inc. as a sales management trainee in January 1993. Over the years, Souter was promoted to several different positions until he ultimately became a district sales manager. Fastenal terminated Souter's employment after he disclosed that he had been arrested and charged with his second DWI offense. Souter applied for unemployment benefits and respondent Minnesota Department of Employment and Economic Development (DEED) determined that Souter was ineligible for benefits because his employment was terminated for employment misconduct and aggravated employment misconduct. Souter appealed the determination, and his appeal was heard by a ULJ.

The ULJ received evidence indicating that the relevant circumstances were as follows. In Souter's capacity as a district sales manager, he was required to travel between the stores he oversaw to work with managers and sales representatives on a daily basis. On January 13, 1993, Souter signed an acknowledgment stating that employees could be affected by recent trends in the insurance underwriting business if their driving record was impaired by a violation, including a DWI violation. The acknowledgment also stated that "[a]ny DWI conviction, including while in personal vehicles and on personal time, is pertinent to this discussion."

For at least a decade, Souter has struggled with an addiction to alcohol. On June 9, 2015, Souter was arrested for DWI and later charged with two misdemeanor DWI offenses. On August 26, 2015, Souter was convicted of one of the offenses. Souter began an outpatient chemical-dependency program in Northfield, Minnesota, after realizing that "it was something that [he] personally needed to be doing." During that time, he also attended Alcoholics Anonymous (AA) meetings and had a sponsor. However, Souter did not complete his outpatient chemical-dependency program and was using alcohol again by the fall of 2015.[1]

In March 2016, Fastenal learned of Souter's 2015 DWI conviction. This discovery led to a meeting between Souter and his supervisor, Anthony Eger, which produced a signed "Disciplinary Action Sheet," stating that further violations of any company policy would result in termination. The Disciplinary Action Sheet stated that Souter violated

[1] The hearing transcript is not clear regarding when Souter stopped going to AA meetings and meeting with his sponsor.

company policy by not informing Fastenal of his DWI arrest and conviction and by driving his personal vehicle for company business while on driving restrictions.

On June 29, 2016, Souter was again arrested for DWI and later charged with three criminal offenses, including two gross-misdemeanor DWI offenses. Souter was released from jail on June 30, and he reported the DWI charges to Eger. On July 1, Eger called Souter and informed him that his employment would be terminated. Later that day, Souter checked into an inpatient treatment facility, seeking treatment for his alcohol addiction. Souter's driver's license was automatically revoked for 15 days as a result of his DWI arrest, but he received a restricted license that allowed him to drive immediately after the automatic revocation on the condition that he use an ignition-interlock system.

The ULJ concluded that Souter was ineligible for unemployment benefits because he was discharged for employment misconduct, reasoning that "Souter's conduct in receiving two DWIs in a year was intentional or negligent, [and] it was clearly serious because it affected his ability to do his job." The ULJ also concluded that Souter's conduct constituted aggravated employment misconduct, reasoning that Souter's second DWI was a gross misdemeanor and his resulting license revocation and ignition-interlock requirement substantially interfered with his ability to do his job. The ULJ determined that a statutory chemical-dependency exception was not applicable because Souter's decision to drive while intoxicated was not a consequence of his chemical dependency. Souter requested reconsideration, and the ULJ affirmed. This certiorari appeal follows.

D E C I S I O N

I.

Souter challenges the ULJ's determination that he is ineligible for unemployment benefits based on employment misconduct and aggravated employment misconduct. An employee who is discharged based on either employment misconduct or aggravated employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1)-(2) (2016). "The question of whether an employee engaged in conduct that disqualifies him or her from unemployment benefits is a mixed question of fact and law." *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016). Whether an employee committed a particular act is a question of fact. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We review factual findings "in the light most favorable to the decision." *Wilson*, 888 N.W.2d at 460. We will not disturb factual findings "as long as there is evidence in the record that reasonably tends to sustain them." *Id.* Whether a particular act constitutes disqualifying misconduct is a question of law, which we review de novo. *Id.*

Employment Misconduct

We first review the ULJ's determination that Souter is ineligible for unemployment benefits based on employment misconduct. Employment misconduct includes "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." Minn. Stat. § 268.095, subd. 6(a)(1) (Supp. 2017). We therefore consider whether Souter's arrest for DWI within 13 months of his prior DWI arrest and

conviction was conduct that displayed a serious violation of the standards of behavior Fastenal had the right to reasonably expect of Souter.

The Minnesota Supreme Court has held that "[c]onduct which results in the loss of a license necessary for the performance of normal job duties is misconduct within the meaning of the unemployment benefit scheme, so as to render the employee ineligible for the receipt of unemployment benefits." *Markel v. City of Circle Pines*, 479 N.W.2d 382, 382 (Minn. 1992). The supreme court reasoned that "the conduct for which Markel was dismissed, inability to perform his normal job duties, due to loss of his driver's license because of an alcohol-related driving offense," was misconduct under the then-existing statutory definition of misconduct and caselaw. *Id.* at 384-85. The supreme court explained that

> Markel's conduct in driving drunk, thus putting at risk his ability to drive his employer's vehicles due to loss of his driver's license, is misconduct under [caselaw], because it showed an intentional and substantial disregard of his duties and obligations to his employer. This is particularly true where Markel had previously lost his ability to drive because of alcohol related violations of the law, and thus necessarily must have understood the risk which he was taking. These circumstances satisfy the statutory requirement of misconduct and the definition of misconduct under [caselaw].

Id. at 385.

This court later held that "[w]hen an employee's child-support obligation is unpaid due to the employee's intentional, negligent, or indifferent conduct and the employee's driver's license that was necessary for employment is therefore suspended, the employee commits employment misconduct." *Lawrence v. Ratzlaff Motor Express Inc.*, 785 N.W.2d

819, 820 (Minn. App. 2010), *review denied* (Minn. Sept. 29, 2010). This court reasoned that Lawrence had "engaged in intentional, negligent, or indifferent conduct that resulted in the loss of a license necessary for the performance of his job duties, and therefore engaged in employment misconduct." *Id.* at 823.

The record establishes that Souter's job as a district sales manager required him to travel between stores to work with store managers and outside salespeople. In fact, Souter's supervisor testified that Souter drove "every day," and Souter himself acknowledged that district sales manager is a job that involves driving. Souter compromised his ability to perform a necessary function of his job—driving to the stores where the people he managed were located—when he engaged in two separate acts of DWI in 13 months. In doing so, he engaged in indifferent conduct that resulted in the loss of his unrestricted driving privileges and thereby compromised his ability to perform his job duties.

We recognize that Souter's circumstances are not identical to those in *Markel* and *Lawrence*. Souter did not drive Fastenal's vehicles, and he was not a professional driver by trade. *See Markel*, 479 N.W.2d at 383 (employee's job duties required him to drive his employer's vehicles); *Lawrence*, 785 N.W.2d at 821 (employee was an over-the-road truck driver). However, if an employee needs to drive to satisfy the requirements of his position, his employer can reasonably expect him to refrain from illegal conduct that negatively impacts his driving privileges. A serious violation of that reasonable expectation results if an employee is arrested for DWI and incurs an accompanying license suspension, revocation, or restriction within 13 months of his prior DWI arrest and conviction. Because

Souter's DWI arrest and attendant loss of driving privileges within 13 months of his prior DWI arrest and conviction clearly displays a serious violation of the standards of behavior Fastenal has the right to reasonably expect from an employee whose job requires him to drive, Souter engaged in employment misconduct under Minn. Stat. § 268.095, subd. 6(a)(1).

Souter's arguments to the contrary are unpersuasive. Souter argues that his DWI arrest did not occur during working hours. Whether or not the DWI occurred during working hours is immaterial because "[e]mployment misconduct means any intentional, negligent, or indifferent conduct, on the job or *off the job*." Minn. Stat. § 268.095, subd. 6(a) (2016) (Supp. 2017) (emphasis added). This statutory language is clear and unambiguous, and its plain meaning controls. *Wilson*, 888 N.W.2d at 458-59 (stating that the statutory definition of employment misconduct is plain and concluding that this court erred by applying a conflicting common-law standard).

Souter also argues that he did not violate any of Fastenal's written policies because both DWI incidents occurred in his personal vehicle and the relevant Fastenal policies regard the use of company vehicles. This argument is unavailing because although a violation of an employer's reasonable policy can constitute employment misconduct, *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 806 (Minn. 2002), such a violation is not necessary to establish employment misconduct, so long as the statutory definition of employment misconduct is otherwise satisfied. And that inquiry broadly asks whether Souter intentionally, negligently, or indifferently engaged in conduct that displayed a

serious violation of the standards of behavior that Fastenal had a right to reasonably expect. *See* Minn. Stat. § 268.095, subd. 6(a)(1).

Souter additionally argues that the meaning of employment misconduct under Minn. Stat. § 268.095, subd. 6(a)(1), is subject to a two-prong analysis. He cites *Houston v. Int'l Data Transfer Corp.*, which held that to establish employment misconduct, the "conduct must be (1) intentional and (2) disregard standards of behavior the employer has a right to expect or the employee's duties and obligations to the employer." 645 N.W.2d 144, 149 (Minn. 2002). Souter's reliance on *Houston* for the proposition that employment misconduct must be intentional is unavailing because *Houston* was specifically superseded by an amendment to the statutory definition of employment misconduct. *See* 2003 Minn. Laws 1st Spec. Sess. ch. 3, art. 2, § 13, at 1473-74. The statutory definition of employment misconduct "is the exclusive definition for determining employee eligibility for unemployment benefits," and the plain definitional language encompasses "any intentional, negligent, or indifferent conduct." Minn. Stat. § 268.095, subd. 6(a), (e) (Supp. 2017); *Wilson*, 888 N.W.2d at 454. Souter's contention that intentional conduct is required is incorrect as a matter of law.

Lastly, Souter argues that his discharge did not meet his "expectations" as a Fastenal employee. The relevant inquiry is not whether Souter's personal expectations were met; the inquiry is whether there was a "serious violation of the standards of behavior the *employer* has the right to reasonably expect." Minn. Stat. § 268.095, subd. 6(a)(1) (emphasis added).

In sum, because Souter's job responsibilities required him to drive, Souter's arrest for DWI and resulting loss of driving privileges within 13 months of his prior DWI arrest and conviction was a serious violation of the standards of behavior that Fastenal had the right to reasonably expect.

Chemical-Dependency Exception

We next consider whether a chemical-dependency exception to the statutory misconduct definition applies. This exception provides that conduct that would otherwise be employment misconduct is not misconduct if it "was a consequence of the applicant's chemical dependency, unless the applicant was previously diagnosed chemically dependent or had treatment for chemical dependency, and since that diagnosis or treatment has failed to make consistent efforts to control the chemical dependency." Minn. Stat. § 268.095, subd. 6(b)(9) (Supp. 2017). The parties do not dispute that Souter's arrest for DWI and attendant license revocation was a consequence of his chemical dependency.

Souter argues that the ULJ erred in concluding that the chemical-dependency exception does not apply because "Fastenal offered no evidence that [he] was 'previously diagnosed chemically dependent.'" This argument ignores the plain statutory language, which provides that the chemical-dependency exception does not apply if *either* "the applicant was previously diagnosed chemically dependent *or* had treatment for chemical dependency, and since that diagnosis *or* treatment has failed to make consistent efforts to control the chemical dependency." Minn. Stat. § 268.095, subd. 6(b)(9) (emphasis added). Because Souter testified that he began an outpatient-treatment program for chemical

dependency following his 2015 DWI conviction, we consider whether Souter "failed to make consistent efforts to control his chemical dependency."

Caselaw establishes that an employee's participation in treatment is relevant in this regard. For example, in *Hein v. Gresen Div.*, this court concluded that the chemical-dependency exception applied because the employee completed treatment and attended every required aftercare meeting. 552 N.W.2d 41, 44-45 (Minn. App. 1996). In *Indep. Sch. Dist. No. 709 v. Hansen*, this court concluded that the chemical-dependency exception applied because the employee completed treatment for alcoholism, consistently attended AA meetings, and attended lectures or seminars on alcoholism. 412 N.W.2d 320, 325 (Minn. App. 1987), *overruled on other grounds by Wilson*, 888 N.W.2d at 452. On the other hand, in *Umlauf v. Gresen Mfg.*, this court concluded that the chemical-dependency exception did not apply where the employee failed to attend an aftercare program that the employee knew would have been beneficial. 393 N.W.2d 198, 200 (Minn. App. 1986).

At the hearing before the ULJ, Souter testified that:

> Q: As part of the plea agreement in [the 2015 DWI case] were you, were you referred over to do a chemical dependency evaluation.
> A: I wasn't referred to do that. *I did start a outpatient treatment program, it wasn't like a court ordered one but I did recognize that it was something that I personally needed to be doing* and entered into a outpatient treatment program in Northfield, Minnesota.
> Q: What did the program consist of?
> A: It was three nights a week of you know from 6:30 to eight o'clock. Just educating and understanding the disease of alcoholism.
> Q: Did you complete the program?
> A: I did not.
> Q: And then you relapsed back into drinking?
> A: Yes. I also throughout that time did attend a number of AA classes or not classes but meetings.
> Q: Do you have a sponsor?

A: I did have a sponsor, yes.
Q: About how long after that initial DWI were you able to maintain sobriety?
A: I would say four months was about exact.
Q: Okay. When do you think just given generally speaking a month, when do you think you relapsed back into drinking?
A: It would have been like in the early fall of 2015.
Q: And then you were back drinking from fall of '15 through the end of June of [2016]?
A: Yes.

(Emphasis added).

Souter argues that he has made consistent efforts to control his chemical dependency because he voluntarily participated in the above-described outpatient treatment program, attended AA meetings, had an AA sponsor, and did not have "any alcohol-related discipline or alcohol-related behavioral issues while working for Fastenal." Souter also argues that "the fact that [he] relapsed and drove under the influence on June 29, 2016, is immaterial to an analysis of his earlier efforts to control his problem." He relies on *Moeller v. Minn. Dep't of Transp*., 281 N.W.2d 879, 882 (Minn. 1979), and *Hein*, 552 N.W.2d at 44. *Moeller* states that "[a]lcoholism is a chronic illness characterized by remissions and exacerbations" and that it is thus "unreasonable to require [an] employee to maintain total abstinence even after he enters treatment." 281 N.W.2d at 882. *Hein* states that "one suffering from . . . chemical dependency *need not* maintain total abstinence from chemicals or *achieve total success in treatment* to make reasonable efforts to retain his employment" and that the chemical-dependency exception requires an evaluation of "*the claimant's efforts, not the results*." 552 N.W.2d at 44 (quotation omitted).

Because the chemical-dependency exception is focused on efforts, and not results, an employee's relapse is not a sufficient basis to conclude that the employee failed to make consistent efforts to control his chemical dependency. The record nonetheless indicates that Souter has failed to do so. Souter testified that he recognized that he needed chemical-dependency treatment. He began an outpatient treatment program, but he did not complete that program. He began drinking again and attended an unknown number of AA meetings. Under the reasoning of the caselaw cited above, Souter's failure to complete treatment that he thought was necessary demonstrates that he failed to make consistent efforts to control his chemical dependency. Thus, the chemical-dependency exception in Minn. Stat. § 268.095, subd. 6(b)(9), does not apply.

Because we conclude that Souter engaged in employment misconduct under Minn. Stat. § 628.095, subd. 6(a)(1), and that the chemical-dependency exception under Minn. Stat. § 628.095, subd. 6(b)(9), does not apply, we affirm the ULJ's ineligibility determination based on employment misconduct.[2]

Aggravated Misconduct

We next review the ULJ's conclusion that Souter engaged in aggravated misconduct, which is defined as "the commission of any act, on the job or off the job, that would amount to a gross misdemeanor or felony if the act substantially interfered with the

[2] We therefore decline to review, as immaterial, the ULJ's determination that Souter engaged in employment misconduct under Minn. Stat § 268.095, subd. 6(c) (2016), which provides that "conduct in violation of sections 169A.20, 169A.31, or 169A.50 to 169A.53 [(DWI offenses)] that interferes with or adversely affects the employment is employment misconduct."

employment or had a significant adverse effect on the employment[.]" Minn. Stat. § 268.095, subd. 6a(a)(1) (2016). The ULJ concluded that Souter engaged in aggravated employment misconduct because "Souter's conduct in driving while under the influence of alcohol and refusing the breath test amounted to a gross misdemeanor," which resulted in revocation of Souter's driver's license and imposition of an ignition-interlock-system requirement and "substantially interfered with Souter's ability to do his job, which required significant driving."

Even if Souter's conduct amounted to a gross-misdemeanor, we are not satisfied that the record supports the ULJ's finding that it substantially interfered with Souter's ability to do his job. Because Souter was promptly discharged after reporting his second DWI, it is difficult to assess precisely how his second DWI would have affected his employment. Souter argues that he obtained a restricted license after 15 days and could have taken vacation during that 15-day period. DEED argues that, because the 2016 DWI was Souter's second DWI, Minnesota law mandated revocation of his license for at least two years. *See* Minn. Stat. § 169A.52, subd. 3(a)(3) (2016) (stating that if a person refuses to submit to a chemical test, the commissioner shall revoke the person's license "for a period of not less than two years" if that person has "one qualified prior impaired driving incident within the past ten years"). While DEED correctly states the law regarding multiple DWI offenses in a ten-year period without further action, DEED downplays the fact that Souter received a restricted license shortly after his second DWI arrest. Because there is little evidence in the record to establish if or how Souter's two-week loss of driving privileges and the imposition of an ignition-interlock-system requirement would have

interfered with Souter's ability to meet his employment responsibilities, we are not persuaded that Souter's DWI arrest and attendant loss of driving privileges, "substantially interfered with [his] employment or had a significant adverse effect on [his] employment." Minn. Stat. § 268.095, subd. 6a(a)(1).

DEED also argues that Souter's DWI history substantially interfered with his employment because it increased Fastenal's risk of vicarious liability. It is not difficult to imagine how Souter's conduct could place Fastenal at risk of adverse legal action and how this risk might substantially interfere with, or have a significant adverse effect on, Souter's employment. However, the ULJ did not rely on this reasoning in concluding that Souter engaged in aggravated employment misconduct. Because this theory was not considered by the ULJ, we do not discuss it further. *See Eley v. Southshore Invs., Inc.*, 845 N.W.2d 216, 222 (Minn. App. 2014) (declining to consider merits of ineligibility determination where ULJ did not consider merits of determination) (citing *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that an appellate court will not consider matters not argued to and considered by the district court)).

In sum, we are not persuaded that Souter's second DWI arrest and attendant license revocation "substantially interfered with [his] employment or had a significant adverse effect on [his] employment." Minn. Stat. § 268.095, subd. 6a(a)(1). We therefore reverse the ULJ's determination that Souter's DWI arrest and attendant license revocation constitutes aggravated employment misconduct.

II.

Souter also challenges the ULJ's denial of his subpoena request. Several weeks before the hearing, Souter sent the chief ULJ a subpoena request for the production of certain documents and to compel the attendance and testimony of Fastenal's executive vice president. The chief ULJ declined to issue any subpoenas. The ULJ was required to "reconsider the request during the hearing and determine whether the request was properly denied." Minn. R. 3310.2914, subp. 1 (2015). At the beginning of the hearing, the ULJ notified the parties that he would delay ruling on Souter's subpoena request until he could determine if the subpoenas were necessary in light of the evidence and testimony presented at the hearing. Before closing statements, the ULJ denied Souter's subpoena request, noting that "additional documents, additional testimony would only be duplicative." Souter requested reconsideration of the ULJ's subpoena ruling, and the ULJ affirmed his ruling explaining, "the information sought was irrelevant."

A ULJ must "ensure that all relevant facts are clearly and fully developed" during an unemployment-benefits hearing. Minn. R. 3310.2921 (2015). ULJs "may issue subpoenas to compel the attendance of witnesses, the production of documents or other exhibits, upon a showing of necessity by the requesting party." Minn. R. 3310.2914, subp. 1. "A request for a subpoena may be denied if the testimony or documents sought would be irrelevant, immaterial, or unduly cumulative or repetitious." *Id.* We review a ULJ's decision regarding the issuance of a subpoena for an abuse of discretion. *Icenhower v. Total Auto., Inc.*, 845 N.W.2d 849, 853 (Minn. App. 2014), *review denied* (Minn. July 15,

2014). This court may reverse the ULJ's decision if relator's substantial rights may have been prejudiced. Minn. Stat. § 268.105, subd. 7(d) (Supp. 2017).

Souter argues that the ULJ abused his discretion, citing *Thompson v. County of Hennepin*, 660 N.W.2d 157, 160-61 (Minn. App. 2003), and *Ntamere v. DecisionOne Corp.*, 673 N.W.2d 179, 182 (Minn. App. 2003). Those cases are factually distinguishable from this case because neither case involved a ULJ's refusal to issue a subpoena. *See Thompson*, 660 N.W.2d at 159-161 (reversing and remanding because relator "was not given a full opportunity to present her defense to the allegation of employment misconduct" when neither of the witnesses who had been subpoenaed appeared and the ULJ proceeded with the hearing "without further inquiry into the witnesses' failure to attend"); *Ntamere*, 673 N.W.2d at 180-82 (reversing and remanding based on a ULJ's failure to enforce a subpoena). We therefore do not find them useful in our analysis.

Souter claims Fastenal's executive vice president's testimony would have been relevant to establish the following:

> (1) his knowledge, as early as 2013, of Scott Souter's alcoholism, (2) his discussions with Souter's wife regarding Souter's alcoholism, including her request that he participate in an intervention to address Scott Souter's alcoholism; (3) his consultation with Fastenal's Human Resources Department and/or other Fastenal management regarding Scott Souter's alcoholism and the intervention, (4) his decision to not attend the intervention, and (5) any other discussions with other Fastenal management and employees regarding Scott Souter's work performance, alcohol disability and need for accommodation.

The reasons Souter cites as justification for the subpoenas do not indicate that the ULJ abused his discretion by denying the subpoena request. First, Fastenal's executive

vice president's knowledge of Souter's alcoholism does not address the elements of employment misconduct or aggravated employment misconduct. Moreover, the record contains testimony from Souter regarding his alcohol use and the intervention. Additional testimony from the executive vice president regarding these topics would have been repetitious. Second, the executive vice president's discussions with other employees regarding Souter's prior work performance is irrelevant given our conclusion in section I of this opinion that Souter's conduct constitutes employment misconduct and not aggravated employment misconduct, because Souter's work performance is not relevant to a finding of employment misconduct under Minn. Stat. § 268.095, subd. 6(a)(1). Third, the need for accommodation is irrelevant given the circumstances of this case. *See* Minn. Stat. § 268.095, subd. 1(7) (Supp. 2017) (stating that whether an employer makes an accommodation is relevant to an analysis regarding whether an applicant quit because it was medically necessary).

As to the documents that Souter requested, many regard Souter's alcohol disability and work performance. Evidence regarding Souter's alcohol use and work performance is immaterial because the parties do not dispute that Souter's conduct was a consequence of chemical dependency and we reject the ULJ's conclusion that Souter engaged in aggravated employment misconduct (which requires a substantial interference with employment or a significant adverse effect on employment).

In sum, the ULJ's denial of Souter's subpoena request did not prejudice Souter's substantial rights and does not constitute reversible error.

Affirmed in part and reversed in part.