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Minn. Stat. § 480A.08, subd. 3 (2016).

STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1595

Joanne Lane,
Relator,

vs.

D W Jones Management, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed August 20, 2018
Affirmed
Johnson, Judge

Department of Employment and
Economic Development
File No. 35624132-3

Joanne G. Lane, Duluth, Minnesota (*pro se* relator)

D W Jones Management, Inc., Walker, Minnesota (respondent)

Lee B. Nelson, Anne Froelich, Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

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

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

JOHNSON, Judge

Joanne Lane sought unemployment benefits after she was terminated from her employment. The department of employment and economic development concluded that she is ineligible for benefits on the ground that she was terminated for employment misconduct. We affirm.

FACTS

D.W. Jones Management, Inc. (DWJMI), provides housing and other services to homeless persons in Duluth. Lane was employed by DWJMI from September 2016 to May 2017. From November 2016 until the end of her employment, she was a site manager at a 44-unit apartment building. Her job consisted primarily of two duties: filling vacancies in housing units based on referrals from local agencies and issuing notices of lease violations to non-compliant residents.

In May 2017, DWJMI discharged Lane because she was not performing her two primary job duties and because she purchased supplies from a non-approved source without authorization. Lane applied for unemployment benefits with the department of employment and economic development. The department made an initial determination that she is ineligible for unemployment benefits because she was discharged for employment misconduct. Lane filed an administrative appeal. In June 2017, an unemployment-law judge (ULJ) conducted an evidentiary hearing. DWJMI called three witnesses: Patty Nadeau, a vice president; Amy Lind, a property manager; and Becky Toso, a human-resources employee. Lane testified on her own behalf.

After the hearing, the ULJ issued a written decision in which he determined that Lane engaged in employment misconduct by failing to fulfill her two primary job duties. Lane requested reconsideration and submitted additional evidence. In September 2017, the ULJ denied Lane's request for reconsideration and affirmed his earlier decision. Lane appeals by way of a petition for a writ of certiorari.

D E C I S I O N

Lane argues that the ULJ erred by concluding that she was terminated for employment misconduct.

Unemployment benefits are intended to provide financial assistance to employees who have been discharged from employment "through no fault of their own." *Stagg v. Vintage Place, Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted). Accordingly, an employee who has been discharged from employment based on "employment misconduct" is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4 (2016); *Stagg*, 796 N.W.2d at 315. "Employment misconduct" is defined by statute to mean

> 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) (Supp. 2017). There are several exceptions to the statutory definition of misconduct, including "inefficiency or inadvertence; . . . simple

unsatisfactory conduct; . . . inability or incapacity; . . . [or] good faith errors in judgment." *Id.* § 268.095, subds. 6(b)(2), (3), (5), (6). The statutory definition of misconduct is exclusive such that "no other definition applies" to an application for unemployment benefits. *Id.* § 268.095, subd. 6(e); *see also Wilson v. Mortgage Resource Ctr., Inc.*, 888 N.W.2d 452, 456-60 (Minn. 2016).

This court reviews a ULJ's decision denying unemployment benefits to determine if 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) (Supp. 2017). 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*, 796 N.W.2d at 315 (quotation omitted). We apply a *de novo* standard of review to mixed questions of fact and law, such as whether an employee's conduct "disqualifies the employee from unemployment benefits." *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).

In this case, the ULJ found that Lane engaged in misconduct because her failure to perform her primary job duties demonstrated "a substantial lack of concern for the employment." With respect to Lane's responsibility to fill vacancies, the ULJ found that DWJMI's evidence was more credible, which showed "that the only reason for delays in moving people in was because Lane failed to complete the paperwork." The ULJ also found that "Lane was not timely in completing the document phase of the application process," that the "agency could not review an application until Lane finished it," and that

residents could not move into vacant apartments until the paperwork was completed and approved. The ULJ further found that, between November 2016 and May 2017, Lane filled only two vacancies and that, by comparison, DWJMI filled six vacancies in the first month after her termination. With respect to her responsibility to issue lease-violation notices, the ULJ found that Lane "did not issue any lease violations during the final six weeks of her employment . . . despite the fact that the daily lease violation log showed that six households engaged in activity that should have resulted in at least 18 notices of lease violations being sent."

The record supports the ULJ's findings with respect to DWJMI's second reason for terminating Lane's employment. The record shows that Lane was required to review a lease-violation log every morning and to initial it to show that she reviewed it. For every violation noted on the daily log, Lane was required to fill out a lease-violation notice form, make a copy of the daily log, staple the documents together, and mail or hand-deliver the notice to the resident. The evidence shows that, during the six-week period before her termination, Lane did not issue a single notice of a lease violation, despite the fact that 18 violations were recorded in the daily log, all of which she initialed.

We are mindful that poor performance because of "inability or incapacity" is not misconduct. *See* Minn. Stat. § 268.095, subd. 6(b)(5). Nonetheless, "an employee's intentional refusal to perform a task, as opposed to negligent forgetfulness, supports the [department's] decision that an employee committed misconduct." *Vargas v. Northwest Area Found.*, 673 N.W.2d 200, 207 (Minn. App. 2004), *review denied* (Minn. Mar. 30, 2004). In general, if the employer's request "is reasonable and does not impose an

unreasonable burden on the employee, the employee's refusal to abide by the request constitutes misconduct." *Id.* at 206; *see also Schmidgall v. Filmtec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Here, Lane's failure to fulfill a primary job duty was not due to inability or incapacity. The ULJ found that Lane knew how to issue lease violations because she did so consistently between November 2016 and March 2017. But Lane did not issue any violation notices after March 22, 2017. She received a verbal warning on April 24, 2017, about her failure to issue lease-violation notices. Yet she continued to not issue any notices. The evidence supports the ULJ's finding that Lane did not issue lease-violation notices between March 2017 and May 2017 because of a substantial lack of concern for her employment.

Lane contends that she did not engage in misconduct because she misunderstood the expectations and did not receive adequate training. Lane testified that she was not given an electronic template to issue lease-violation notices, which she was required to use. DWJMI's evidence contradicted Lane's testimony on this point. Lind testified that she trained Lane on how to issue lease-violation notices after Lane was hired, that they "sat down [and] went over the logs together," that she "showed her how to do violations," and that "[v]iolations were given out at that time via me showing her and her doing them at that time." The ULJ found the employers' witnesses to be more credible than Lane. "Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus*, 721 N.W.2d at 345.

Lane also contends that she was told "not to write Lease Violations unless it was a gross infraction of the Lease." Lane did not provide that excuse in her testimony to the

ULJ, and there is no other evidence in the record to support the contention. At the evidentiary hearing, Lane testified that she did not issue more lease-violation notices because she was required to get approval before issuing them. Lind's testimony is consistent on that point; she testified that she told Lane that she "need[ed] to see [the lease-violation notices] to make sure that they're okay" before they were sent. But there is no evidence that Lane prepared and submitted any lease-violation notices for Lind to review during the last six weeks of her employment. Accordingly, Lane's excuse is not a valid excuse for failing to prepare and issue lease-violation notices.

In sum, the ULJ did not err by finding that Lane engaged in employment misconduct by failing to issue lease-violation notices and, accordingly, did not err by concluding that Lane is ineligible for unemployment benefits.

Affirmed.