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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-2018**

Wendy Davis,
Relator,

vs.

International Brotherhood of Electrical Workers #292 Health Care Plan,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 20, 2018
Affirmed
Rodenberg, Judge**

Department of Employment and Economic Development
File No. 35830831-3

Wendy Davis, Loretto, Minnesota (pro se relator)

International Brotherhood of Electrical Workers #292 Health Care Plan, Minneapolis,
Minnesota (respondent-employer)

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

Considered and decided by Connolly, Presiding Judge; Johnson, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Relator Wendy Davis appeals from an unemployment-law judge's determination that relator was terminated from her job as a full-time payroll auditor for employment misconduct, rendering her ineligible for unemployment benefits. We affirm.

FACTS

Relator worked as a full-time payroll auditor at respondent International Brotherhood of Electrical Workers #292 from February 20, 2012 to August 8, 2017. On August 8, 2017, the employer terminated relator's employment after relator was alleged to have made several threats against her supervisor and other office personnel.

The office manager reported to relator's supervisor that relator stated at work that relator believed that the supervisor was out to get her, and that relator stated that relator could run into the supervisor at a bar and "it won't be pretty." The office manager further reported that relator displayed her permit to carry a firearm and said that she was a "good shot." Based on the timing of these comments, the office manager believed that relator was indicating that her complaints about her supervisor and her statements about her legal right to carry a firearm and ability to use one proficiently were related. Relator also allegedly told other employees that the supervisor was out to get her, and that management would be better off if it kept relator employed. Relator was suspended without pay, and the employer conducted an internal investigation which revealed that appellant had made similar comments to other employees. Relator was terminated after this investigation for making threatening statements and for being dishonest in the investigative interview.

Relator applied for unemployment benefits and was initially determined to be ineligible because of employment misconduct. Relator appealed, and a hearing was held before an unemployment-law judge (ULJ). The ULJ determined that relator had been discharged because of employment misconduct and was therefore ineligible for unemployment benefits. The ULJ affirmed that decision after reconsideration.

This appeal followed.

D E C I S I O N

We may only “reverse or modify the [ULJ’s] decision if the substantial rights of the [relator] may have been prejudiced because the findings, inferences, conclusion, or decision” violate constitutional provisions, exceed statutory authority, were made after an unlawful procedure, are based on an error of law, are unsupported by the record evidence, or are arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2016). An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (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 and will not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them.” *Wilson*, 888 N.W.2d at 460 (quotations omitted). “Whether a particular act constitutes disqualifying conduct is a

question of law we review de novo.” *Id.* “Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus*, 721 N.W.2d at 345.

The ULJ found that relator knowingly made threatening statements concerning her supervisor and other employees and managers. The ULJ specifically found that relator told coworkers that she believed that management was out to get her and “said in threatening tones that it would be better for them if they kept her employed.” The ULJ also determined that relator referenced and displayed her permit to carry a firearm “to emphasize . . . the threat she was making.” After relator’s coworkers reported these comments to the employer, the employer investigated the allegations and interviewed relator about the comments. The ULJ found as a fact that relator lied to the investigators about the alleged threats.

The ULJ’s factual findings regarding relator’s conduct are supported by the record. The ULJ specifically credited the testimony from the employer’s witnesses, found relator’s testimony not credible, and explained the reasons for the credibility determinations made. We defer to these credibility determinations. *Skarhus*, 721 N.W.2d at 344.

We next review whether relator’s conduct as found by the ULJ constitutes disqualifying employment misconduct. Employment misconduct is “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). “[W]hether the act committed by the employee constitutes

employment misconduct is a question of law, which we review de novo.” *Skarhus*, 721 N.W.2d at 344.

After an internal investigation, the employer concluded that relator made threatening statements concerning her supervisor and other personnel, and made those statements coupled with her comments concerning her legal right to carry a firearm and her shooting proficiency. Such threats certainly demonstrate a serious breach of the standards of behavior that an employer can reasonably expect of employees and display a substantial lack of concern for the employment.

Relator argues that the ULJ erred in finding that her termination was because of employment misconduct. Relator’s arguments largely challenge the ULJ’s credibility determinations, arguing that her comments were not meant to be threatening, that her testimony was not hesitant or untruthful, and that the testimony from the employer’s witnesses had been “manipulated and embellished to the management’s benefit.” But the ULJ, having heard the testimony, properly resolved these discrepancies by making explicit credibility determinations. *Wilson*, 888 N.W.2d at 460. We will not disturb those credibility findings where the record supports them. *Skarhus*, 721 N.W.2d at 344.

Relator also makes a number of arguments on appeal alleging that her supervisor was biased against persons with mental-health issues and implemented unfair and new leave policies. But the employer fired relator for making threatening statements and lying to investigators, not for her use of leave time or for any medical reasons. We review the ULJ’s determination that relator is ineligible for unemployment benefits because of employment misconduct based on the record provided to the ULJ. On this record, which

supports the ULJ's findings of fact, the ULJ did not err in concluding that relator was terminated for employment misconduct.

Affirmed.