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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0299**

Brittany Selander,
Relator,

vs.

Osseo School District,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed December 3, 2018
Affirmed
Rodenberg, Judge**

Department of Employment and Economic Development
File No. 35928264

Brittany Selander, Brooklyn Park, Minnesota (pro se relator)

Osseo School District, Maple Grove, Minnesota (respondent employer)

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

Considered and decided by Rodenberg, Presiding Judge; Bjorkman, Judge; and
Hooten, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Relator Brittany Selander appeals the decision of an unemployment-law judge (ULJ) determining that relator is ineligible for unemployment benefits because she was discharged for employment misconduct. Because the record supports the ULJ's decision that relator was discharged for employment misconduct, we affirm.

FACTS

Relator began working at a before-and-after-school program operated by respondent Osseo School District in August 2014. Relator was discharged on October 2, 2017, and she applied for unemployment benefits. The Minnesota Department of Employment and Economic Development (DEED) made an initial determination that relator was eligible for unemployment benefits because she had been discharged for reasons other than employment misconduct. The district appealed, and the parties had a telephonic hearing with a ULJ. The ULJ determined that relator is ineligible for unemployment benefits because she had been discharged from her employment for misconduct. The unemployment benefits previously paid to relator are considered overpaid benefits, requiring repayment under Minn. Stat. § 268.105, subd. 3a(b) (2016). Relator requested reconsideration, and the ULJ affirmed the earlier decision.

At the hearing before the ULJ, the district presented the testimony of Janet Bouyer, its Human Resources Director. Bouyer stated that relator was discharged because of continuing violations of district policy, refusing to follow directives, and attempting to influence the outcome of an investigation through coercion. Specifically, Bouyer testified

that relator violated policies requiring employees to be supportive and respectful to coworkers. There is another policy requiring employees to be a role model to the children and to carefully choose words, tone, and volume. Relator received a directive in December 2015 about how to communicate appropriately with her colleagues, and relator was asked to write down questions and concerns in a staff notebook to avoid conflicts with other employees and possible arguments in front of students. Bouyer claims that relator was reminded to use the notebook and communicate respectfully to coworkers after a conflict in December 2015, and after another conflict in February 2016.

In the summer of 2017, relator's coworkers complained to Bouyer about relator's behavior. The coworkers did not want to work with relator. They described her as rude, disrespectful, condescending, and unprofessional. One employee told Bouyer that he would not go back to relator's worksite because of his negative interaction with her. On August 10, 2017, Bouyer gave relator a notice of deficiency. This notice directed relator to (among other things) build and maintain positive relationships, cease raising her voice at staff members, and refrain from instigating or participating in negative, provocative, or argumentative communication in front of youth.

Sometime around August 31, 2017, relator was present at a staff meeting conducted by Y.Y., a supervisor/lead instructor. Y.Y. later complained to relator's supervisor, D.L., that relator had been challenging and disrespectful. D.L. told Bouyer, who asked D.L. to take statements from staff who were at the meeting. Bouyer determined that relator had in fact been challenging and disrespectful during the meeting. In a meeting with relator on September 14, 2017, Bouyer gave relator a supplemental notice of deficiency and

suspended her because of her behavior at the meeting with Y.Y. Bouyer instructed relator that she was not to engage in retaliation. Relator had a different version of what happened at the meeting with Y.Y. and wanted to talk to Bouyer about other employees trying to get her in trouble. Bouyer scheduled a meeting to discuss relator's concerns, but relator canceled the meeting.

After the September 14 meeting, relator called Bouyer to bring up various complaints about Y.Y. not acting professionally toward her over the last year. Bouyer told relator that, if she wanted to file a separate complaint about Y.Y., she would need to have a separate meeting with Bouyer to provide information, and then Bouyer would look into it. Bouyer scheduled a meeting for the following week.

Before meeting with Bouyer, relator made multiple phone calls to one coworker's home number and sent multiple text messages to another coworker, asking them to complain to Bouyer about Y.Y., but neither coworker wanted to do so. One of the coworkers provided the text messages to Bouyer. Bouyer testified that relator claimed not to recall sending the texts or making the phone calls. Bouyer also testified that the coworker who received the texts felt like relator was bullying him. Relator was discharged by the district. Based on this evidence, the ULJ determined that relator was discharged for employment misconduct. This certiorari appeal followed.

D E C I S I O N

Relator argues that the ULJ erred by determining that she is ineligible for unemployment benefits. We review a ULJ's decision denying benefits to determine whether the findings, inferences, conclusions, or decision are affected by an error of law,

are unsupported by substantial evidence in view of the entire record, or are arbitrary or capricious. *See* Minn. Stat. § 268.105, subd. 7(d) (Supp. 2017). The ULJ’s factual findings are viewed in the light most favorable to the decision being reviewed, and we defer to the ULJ’s credibility determinations. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether an employee’s conduct “disqualifies the employee from unemployment benefits is a mixed question of fact and law which appellate courts review de novo.” *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted).

Unemployment benefits are intended to provide financial assistance to workers who have been discharged from employment “through no fault of their own.” *Id.* (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” means 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. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 458-60 (Minn. 2016).

The ULJ found that relator’s actions displayed a serious violation of the standards of behavior that the district had a right to reasonably expect of her. The ULJ found that

the district had a right to reasonably expect that relator not engage in retaliation or other actions that would create unrest and disruption among her coworkers, negatively affecting the workplace. The ULJ found that relator disrupted the workplace by pestering coworkers to make complaints about Y.Y. in retaliation for thinking Y.Y. had made a complaint about relator that resulted in relator's suspension. To the extent that testimony at the hearing conflicted, the ULJ expressly found Bouyer's testimony to be more credible.

Relator argues that she neither retaliated against Y.Y. for complaining about her nor tried to "coerce" coworkers into complaining about Y.Y. as Bouyer claimed. Because coercion involves force or threats, relator contends that her actions did not amount to coercion. We agree, and the ULJ agreed as well. Relator did not coerce anyone by force or threats, and the ULJ so found. We also agree with relator that she did not engage in "retaliation" as that term is defined in the district's employee policies. Relator may have had some valid concerns about how some coworkers had treated her. But the ULJ found that relator pestered coworkers to complain about Y.Y. and that this conduct was disruptive. The record supports that finding.

Relator was not discharged, or retaliated against, for making a valid complaint against a coworker as she contends. The record supports the ULJ's finding that the district provided relator with an appropriate and nondisruptive mechanism to make complaints against Y.Y., but relator chose to take another route in disregard of the district's instructions. Relator's actions constitute employment misconduct because her employer could reasonably expect that relator would follow instructions for making complaints, and the district informed relator about this expectation, in addition to instructing her to keep

the matter confidential. *See Nieszner v. Minn. Dep't of Jobs & Training*, 499 N.W.2d 832, 838 (Minn. App. 1993) (“A single incident may constitute misconduct if the employee sufficiently disregards his or her employer’s expectations.”). Having carefully considered each of relator’s arguments, we conclude that the ULJ did not err by determining that relator was discharged for employment misconduct and, accordingly, that she is ineligible for unemployment benefits.

Affirmed.