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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0736**

Robyn Potter,
Relator,

vs.

St. Joseph's Medical Center,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed December 24, 2018
Affirmed
Reilly, Judge**

Department of Employment and Economic Development
File No. 36123777-3

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Considered and decided by Schellhas, Presiding Judge; Reilly, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

REILLY, Judge

Relator challenges the determination of an unemployment-law judge (the ULJ) that she is ineligible for unemployment benefits because she was discharged for employment misconduct. Because substantial evidence supports the ULJ's determination that relator committed employment misconduct when she failed to abide by her employer's influenza vaccination policy, we affirm.

FACTS

Relator Robyn L. Potter (Potter) was employed part-time as a registered nurse at St. Joseph's Medical Center (SJMC), which is a part of Essentia Health (Essentia) integrated healthcare system, from August 2013 until her discharge in December 2017. Potter was discharged from her employment when she refused to receive an influenza vaccination. Potter argues that the ULJ's determination violated her constitutional rights because (1) the ULJ's decision was arbitrary and capricious since it improperly analyzed the sincerity of her beliefs; and (2) the ULJ's decision was unsupported by substantial evidence in view of the entire record.

In August 2017, Essentia implemented a revised influenza vaccination policy to "help protect Essentia Health staff, visitors, patients, and families from acquiring and transmitting seasonal influenza disease." The policy required that all employees, vendors, contractors, and volunteers receive the influenza vaccine unless they qualified for a religious or medical exemption. Essentia required employees who sought a religious or medical exemption from vaccination to complete an exemption request form. The Essentia

Health Exemption Review Committee (the committee)—comprised of members from Essentia’s legal, human resources, and pastoral care teams—reviewed the exemption requests based upon legal standards and Equal Employment Opportunity Commission guidelines. Employees whose exemption requests were denied by the committee could appeal the decision by submitting a letter to be reviewed by Essentia’s senior leadership team. Essentia terminated the employment of employees who were not vaccinated and did not receive a medical or religious exemption.

In November 2017, Potter sought a religious exemption from vaccination. Potter’s exemption request form indicated that she is Catholic and that the “Bible, both the Old and New Testaments reference keeping [the] body blemish-free so [one] might have abundant life.” Potter also wrote that the vaccination policy is “discriminating” against her “own personal beliefs.” After its review of Potter’s exemption request, the committee denied Potter’s exemption request because the request “[did] not appear to be based upon any religious reasons.” Potter appealed. In December 2017, the senior leadership team determined that Potter’s request was a “vaccine refusal based on non-religious belief or personal preference” and there was a “lack of explanation for conflict between religious belief and vaccine.” Essentia provided Potter a deadline to receive the influenza vaccination. Because Potter did not receive the influenza vaccine by December 14, 2017, Essentia terminated her employment.

Following her discharge from employment, Potter applied for unemployment benefits with respondent Minnesota Department of Employment and Economic Development (DEED). In January 2018, DEED determined that Potter was ineligible for

unemployment benefits because she was discharged for employment misconduct. Potter appealed DEED's determination, and the ULJ conducted a telephone hearing.

At the hearing, Potter testified that she no longer takes any types of medications or puts any impurities into her body. Potter explained she had previously received the influenza vaccine during her time in the military, but she had not been vaccinated during the course of her employment by Essentia. Potter did not dispute that she had received at least seven other vaccinations between 2009 and 2012. Potter stated that "there's proof that vaccinations for other diseases such as polio, measles, mumps, rubella . . . actually benefit the person receiving them and there's strong evidence that supports that they save lives, and the flu vaccine does not have any documentation that [it] can." Potter stated that "nursing journals, peer reviewed articles, things from the CDC" or other scientific proof or evidence could change her opinion of the efficacy of the influenza vaccine. Potter testified that her belief that the influenza vaccine is not effective is "a personal belief based on numbers from the government." Potter was unable to cite to any specific Bible passages that formed the basis of her belief that she must be "blemish free" and that "blood shall be kept pure and free from contaminates." Potter acknowledged that this belief was "not really a church teaching" but rather her "own faith, person[al] faith belief."

The ULJ issued a decision concluding that Potter was discharged for employment misconduct. The ULJ determined that Potter's refusal to be vaccinated displayed a serious violation of the standard of behavior that Essentia had a right to reasonably expect. After Potter filed a request for reconsideration, the ULJ issued an order affirming the prior decision.

This certiorari appeal follows.

D E C I S I O N

Unemployment benefits are intended to provide financial assistance to persons 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, a person 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 314. Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law. *Stagg*, 796 N.W.2d at 315. Determining whether an employee committed a particular act is a question of fact viewed in the light most favorable to the ULJ’s decision and affirmed if supported by substantial evidence. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court will not disturb the ULJ’s factual findings when the evidence reasonably tends to support those findings. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Determining whether a particular act constitutes disqualifying misconduct is a question of law that we review de novo. *Id.* at 804.

I. The ULJ’s determination did not violate Potter’s constitutional right to free exercise of religion.

The United States Constitution protects the right to the free exercise of religion. U.S. Const. amend. I. “The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires.” *Employment Div., Dep’t of Human Res. of Oregon v. Smith*, 494 U.S. 872, 877, 110 S. Ct. 1595, 1599 (1990). The

United States Supreme Court has held that a state cannot deny unemployment benefits to applicants who were forced to choose between their religious beliefs and employment because such a denial violates the Free Exercise Clause of the First Amendment. *See, e.g., Frazee v. Ill. Dep't of Employment Sec.*, 489 U.S. 829, 834-35, 109 S. Ct. 1514, 1517-18 (1989) (holding that applicant could not be disqualified from receiving unemployment benefits when he refused a position that would have required him to work on Sundays contrary to his religious beliefs); *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 139-41, 107 S. Ct. 1046, 1048-49 (1987) (holding that state's refusal to award unemployment benefits to applicant discharged for refusing to work on Sabbath violated the Free Exercise Clause); *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 717-18, 101 S. Ct. 1425, 1432 (1981) (holding that state's refusal to award unemployment benefits to applicant discharged for refusing to manufacture weapons violated the Free Exercise Clause).

Additionally, the Minnesota Supreme Court has interpreted the Freedom of Conscience Clause of the Minnesota Constitution to afford even greater protection than the Free Exercise Clause of the United States Constitution. *See State v. Hershberger*, 462 N.W.2d 393, 397-98 (Minn. 1990). The Freedom of Conscience Clause provides “[t]he right of every man to worship God according to the dictates of his own conscience shall never be infringed . . . nor shall any control of or interference with the rights of conscience be permitted.” Minn. Const. art. I, § 16.

In order to qualify for unemployment benefits under either the federal or state standard, an applicant who quits employment must demonstrate that continuing in the

employment would have burdened the applicant’s sincerely held religious beliefs. *See Frazee*, 489 U.S. at 833, 109 S. Ct. at 1517 (“[B]eliefs must be rooted in religion—not purely secular—to benefit from Free Exercise Clause protection.”); *State v. Pedersen*, 679 N.W.2d 368, 373 (Minn. App. 2004) (“[W]e must first determine whether appellant’s [belief] is a sincerely held religious belief intended to be protected by section 16.”), *review denied* (Minn. Aug. 17, 2004).

a. The ULJ did not err in its determination that Potter’s proffered beliefs for refusing vaccination were not sincerely held religious beliefs.

We turn to the question of whether Potter’s beliefs are sincerely held religious beliefs. The determination of what is a religious belief or practice is “a difficult and delicate task.” *Thomas*, 450 U.S. at 714, 101 S. Ct. at 1430. The “narrow function” of an appellate court is to determine if petitioner’s termination resulted from “an honest conviction that such work was forbidden by his religion.” *Id.* at 726, 101 S. Ct. at 1436. When reviewing a ULJ’s conclusions, this court may affirm the decision, remand for further proceedings, reverse, or modify the decision if the relator’s substantial rights were prejudiced because the conclusion of the ULJ violated the constitution, was in excess of the ULJ’s statutory authority, was based on an unlawful procedure, was affected by error of law, or was arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d)(1)-(4), (6) (2016).

In *Thomas*, the Supreme Court analyzed an individual’s religious beliefs when a Jehovah’s Witness terminated his employment with a factory because his religious beliefs prohibited him from manufacturing weapons. 450 U.S. at 709, 101 S. Ct. at 1427. The Indiana Supreme Court reasoned that because the religious nature of Thomas’ belief was

unclear, the belief was a “personal philosophical choice,” and therefore not protected by the First Amendment. *Id.* at 714, 101 S. Ct. at 1430. However, the Supreme Court reversed the Indiana court, explaining that the court “should not undertake to dissect religious beliefs” even when the “beliefs are not articulated with the clarity and precision that a more sophisticated person might employ.” *Id.* at 715, 101 S. Ct. at 1430.

While we certainly agree that courts should not undertake to dissect religious beliefs, we understand that the sincerity of a religious belief is a quintessential fact question that must be analyzed. This question of sincerity often hinges on credibility and whether the applicant has been consistent in observing or honoring the belief. *See E.E.O.C. v. Unión Independiente de la Autoridad de Acueductos y Alcantarillados de Puerto Rico*, 279 F.3d 49, 56 (1st Cir. 2002) (“Credibility issues such as the sincerity of an employee’s religious belief are quintessential fact questions.”); *Int’l Society for Krishna Consciousness, Inc. v. Barber*, 650 F.2d 430, 441 (2d Cir. 1981) (stating that “an adherent’s belief would not be ‘sincere’ if he acts in a manner inconsistent with that belief”). This court defers to the ULJ’s credibility determinations when they are supported by substantial evidence and the ULJ sets forth a valid reason for crediting or discrediting the witness. *See Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007); *see also* Minn. Stat. § 268.105, subd. 1a(a) (2016) (stating that the ULJ must set forth the reason for crediting or discrediting testimony when credibility “has a significant effect on the outcome of a decision”).

Potter argues that the ULJ’s decision was arbitrary and capricious because the ULJ analyzed her beliefs by imposing his own view of logical religious objection. This court

interpreted the sincerity of an appellant's religious beliefs in *Pedersen*, where the defendant asserted that the statute precluding possession of marijuana violated her constitutional right to free exercise of religion. 679 N.W.2d at 371. Pedersen testified that medical use of marijuana was consistent with her religious beliefs as a Messianic Jew and that marijuana alleviated physical symptoms of her medical conditions. *Id.* at 371-72. Pedersen, a teacher of ministry studies, cited to specific Bible passages to support her use of marijuana for religious reasons. *Id.* at 372. However, this court concluded that Pederson "failed to provide any evidence that establishes a connection between the practice of her religion and the medicinal use of marijuana." *Id.* at 376. This court ultimately concluded that Pederson's "belief in the medicinal use of marijuana is a personal, secular belief, driven more by her medical needs than any philosophical principle or religious tenet." *Id.*

Applying the analysis in *Pedersen*¹ to this case, we conclude that the ULJ did not err when it determined that Potter was driven by a personal, secular belief. Potter was unable to provide any evidence supporting a connection between the practice of her religion and abstinence from the influenza vaccination. Unlike Pedersen, Potter was unable to cite to any specific Bible verses to support her personal belief. *Id.* at 371-72. Though we recognize that whether all members of a religious sect share a belief is not determinative, Potter admitted that her belief was not a teaching of her church. *See Thomas*, 450 U.S. at 708, 101 S. Ct. at 1427. Potter testified:

¹ We recognize that *Pederson* involved a criminal prosecution for a felony controlled-substance crime. 679 N.W.2d 368. However, because Pederson's defense was that her medical use of marijuana was protected by the Freedom of Conscience Clause of the Minnesota Constitution, we find this court's analysis persuasive.

Like I said, this is not really a church teaching. It's more of my personal faith belief and I do not put any type of toxins into my body. And there is right around six or seven neurotoxins that are found in the flu vaccine and I'm not willing to take the chance for something that has not been proven effective.

Potter's assertion that her faith requires that she not inject herself with impurities is undercut by her own rationale. Potter stated that if the flu shot was scientifically proven to be effective she "probably would" receive it. It follows that Potter is unwilling to inject what she considers scientifically ineffective impurities but is willing to inject what she considers scientifically effective impurities. This supports the respondents' assertion that Potter's beliefs are not sincerely held religious beliefs, but, rather, "her objection was based on her medical and scientific views, cloaked under the guise of religion." The ULJ found: "[i]t is not logical that a person has a religious objection only to ineffective vaccines. It is more logical that a person would have a religious objection to all vaccines. Potter's argument about effectiveness suggests that her beliefs are not based in religion." The ULJ properly considered the sincerity of Potter's beliefs.² Ultimately, we agree with the ULJ's determination that Potter's beliefs were not sincerely held *religious* beliefs.

² We recognize that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas*, 450 U.S. at 714, 101 S. Ct. at 1430. Though the ULJ used the word "logical," it is clear that the ULJ was not making a finding on the reasonableness of Potter's aversion to vaccination. Rather, the ULJ was assessing the sincerity of Potter's beliefs and determining if those beliefs were proscribed from religion. In determining whether a belief is entitled constitutional protection, courts must assess whether the beliefs are sincerely held *religious* beliefs. *Id.* 450 U.S. at 717-18, 101 S. Ct. at 1432 ("Only beliefs rooted in religion are protected by the Free Exercise Clause.").

b. The ULJ's decision is supported by the record.

Potter argues that this court should reverse the ULJ's decision because "the substantial rights of the petitioner were prejudiced because the findings, inferences, conclusion or decision" are "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d)(5) (2016). Potter asserts that she provided "ample evidence" that her objection to the influenza vaccine was rooted in religion and therefore the ULJ erred in its determination. But this is a distortion of the standard of review. On review, the question is not whether Potter submitted substantial evidence in support of her position, but whether the ULJ's findings are supported by substantial evidence. *See Ywswf*, 726 N.W.2d at 533. Because there is substantial evidence in the record to support the ULJ's findings, the ULJ did not err in denying Potter unemployment benefits.

II. The ULJ did not err in its determination that Potter's refusal to receive the influenza vaccine is employment misconduct.

An applicant who is discharged by an employer for employment misconduct is ineligible for unemployment benefits. *See* Minn. Stat. § 268.095, subd. 4. 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." *Id.*, subd. 6(a) (2016). The legal question of whether the particular act committed by the employee constitutes employment misconduct is reviewed *de novo*. *Skarhus*, 721 N.W.2d at 344.

Potter argues that this court should reverse the ULJ's determination because the influenza vaccine policy was unreasonable. We disagree for two reasons. First, Potter did not argue below that the policy was unreasonable, so we need not consider it on appeal. *See Haskins v. Choice Auto Rental*, 558 N.W.2d 507, 512 (Minn. App. 1997) (declining to consider issues on appeal that were not raised below). Second, even if we were to consider the argument, Essentia's influenza vaccination policy is reasonable. Essentia's policy, requiring all staff not otherwise exempted, to receive the influenza vaccine was based upon Essentia's aspiration to "have zero preventable harm for patients and staff." We agree with the ULJ's determination that, because it is a healthcare institution, SJMC reasonably "requires staff to get flu vaccinations for the maximum protection of patient health." The vaccination policy provided exemption for those employees unable to be vaccinated for religious or medical reasons. Potter's argument that the policy is unreasonable because she did not receive an exemption is not persuasive. The record demonstrates that other employees requested and received both religious and medical exemptions.

In summary, the ULJ's determination was not arbitrary or capricious and there are sufficient facts in the record to support the finding that Potter's conduct was not based on the requisite sincerely held religious beliefs.

Affirmed.