STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2044

Abdirahman Warsame,
Relator,

vs.

Arlyce Cleveland, Ltd.,
Respondent,
Department of Employment and Economic Development,
Respondent.

Filed September 16, 2019
Affirmed
Reyes, Judge

Department of Employment and Economic Development
File No. 36680958-3

Abdirahman Warsame, Roseville, Minnesota (pro se relator)

Arlyce Cleveland, Ltd., Blaine, Minnesota (respondent employer)

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

Considered and decided by Smith, Tracy M., Presiding Judge; Reyes, Judge; and Florey, Judge.

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

REYES, Judge

Relator challenges an unemployment-law judge's (ULJ) determination that he is ineligible for unemployment benefits because his employer discharged him for

unemployment misconduct after he refused to sign a disciplinary letter imposing a probationary term. We affirm.

FACTS

Relator Abdirahman Warsame worked for respondent Arlyce Cleveland, Ltd. (ACL) as an accountant from October 2017 to July 2018. Warsame reported to the owner and president of ACL, Arlyce Cleveland. As a result of concerns with his conduct, Cleveland attempted to place Warsame on a 30-day probation and requested that he sign a document outlining the terms of probation. Warsame declined to sign the document, and ACL discharged him.

Warsame applied for and obtained unemployment benefits, which ACL appealed. The ULJ determined Warsame to be ineligible for unemployment benefits under Minn. Stat. § 268.095 (2018). Warsame filed a request for reconsideration, which the ULJ denied. This certiorari appeal follows.

D E C I S I O N

An employee is ineligible for unemployment benefits if she or he was "discharged because of employment misconduct." Minn. Stat. § 268.095, subd. 4(1) (2018). This court may reverse or modify the ULJ's decision "if the substantial rights of the petitioner may have been 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) (2018). Whether an employee committed misconduct is a mixed question of law and fact. *Stagg v. Vintage Place*, 796 N.W.2d 312, 315 (Minn. 2010). Whether an employee committed a particular act is a fact question that we will

review in the light most favorable to the ULJ's decision and will affirm if substantial evidence supports the ULJ's finding. *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether the act constitutes misconduct is a question of law that we review de novo. *Stagg*, 796 N.W.2d at 315.

I. Substantial evidence in the record supports the ULJ's factual findings.

Warsame challenges the ULJ's factual findings about his conduct, arguing that Cleveland approved all of his time off, he never lied about time off, and he came to and left work on time. He also challenges the ULJ's findings regarding customer complaints about his services and the quality of his work. We are not persuaded.

The ULJ found that, although ACL allowed employees to work flexible hours, employees needed to provide advance notice when they planned to do so. The ULJ found Warsame did not always provide advance notice when he planned to work flexible hours or when he left work at an atypical time. The ULJ also found that multiple customers complained about Warsame's accounting services, and Warsame was dishonest with Cleveland about client communications. It found that Warsame's work contained several errors, and he spent more time on projects than should have been required.

Substantial evidence in the record supports the ULJ's factual findings. Cleveland testified that Warsame missed too much time, had no consistency with his schedule, and failed to provide advance notice of his absences or late arrivals. She provided the following examples: On May 18, he took the day off without advance notice. On May 23, 2018, he left at 2:15 p.m. to run errands and said he would be back but never came back. On June 4, he took the day off without advance notice. On July 2, he took the day off because the

power was out in his house but did not provide notice until a few hours into the day. On July 16, he came in at 10:30 a.m. because he overslept and had to take his sister to the airport, without providing advance notice. And on July 20, he came in at 10:00 a.m. without providing advance notice or reason. She also testified that Warsame often took two to three times the amount of time required to complete a project, and between 15 to 20 clients complained to her about his work. She stated that, on four different occasions, Warsame told her he was waiting on information from clients to complete a project, but when she spoke with the clients, she learned that Warsame never actually told them that he needed information from them.

Warsame attacks the ULJ's credibility determinations and details his version of the events. This court defers to the ULJ's credibility determinations when they are supported by substantial evidence. *See Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 531 (Minn. App. 2007). When, as here, the credibility of the involved parties testifying had a "significant effect on the outcome of [the] decision," the ULJ must "set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1a(a) (2018).

Here, the ULJ stated that it credited Cleveland's testimony because it was "logical and certain" and that Warsame's testimony "was not logical and not consistent." The ULJ noted inconsistencies in Warsame's testimony. For example, Warsame testified that he always let Cleveland know when he would be working flexible hours but later testified that on one instance, he left early without notifying Cleveland. Moreover, on one instance when Warsame left work early, he testified that he did not notify Cleveland because he thought he would be back in time. The ULJ found this testimony illogical and unreasonable

because he claimed he thought he could travel from the office in Blaine to Bloomington, 27.5 miles away, in 15 or 20 minutes. The reasoning behind the ULJ's credibility determinations meet the statutory requirement of Minn. Stat. § 268.105, subd. 1a(a). *Ywswf*, 726 N.W.2d at 532-33. (considering reasonableness of testimony as compared to other evidence when making credibility determinations). We therefore affirm the ULJ's factual findings.

II. Warsame's conduct amounts to employment misconduct.

We construe Warsame's second argument to be that his conduct did not amount to employment misconduct. We disagree.

Minnesota statutes define employment misconduct as any intentional, negligent, or indifferent conduct, on or off the job, that displays a serious violation of the standards of behavior the employer has set or a substantial lack of concern for the employment. Minn. Stat. § 268.095, subd. 6(a) (2018). Misconduct can include failure to abide by an employer's request if it is reasonable and does not impose an unreasonable burden on the employee. *Sandstrom v. Douglas Mach. Corp.*, 372 N.W.2d 89, 91 (Minn. App. 1985). What is reasonable depends on the circumstances of each case. *Id.*

Cleveland requested Warsame to sign a document agreeing to the terms of his employment for the 30-day probationary period. The terms included a set schedule with a 30-minute lunch break during which he could make personal calls and required that Cleveland approve any vacation time before he took it. In addition, Warsame's client communications had to be approved by Cleveland, he had to spend a reasonable amount of

time on each job, reduce errors, enter time daily and report all time to a client, and report to Cleveland regarding the work he would do that week.

"Failure to report to work is misconduct." *Del Dee Foods, Inc. v. Miller*, 390 N.W.2d 415, 417 (Minn. App. 1986). And this court has recognized an employer's right to establish and enforce reasonable requirements related to an employee's attendance. *Jones v. Rosemount, Inc.*, 361 N.W.2d 118, 120 (Minn. App. 1985). Warsame committed employment misconduct by repeatedly failing to abide by ACL's attendance policies. Cleveland had the right to establish and enforce attendance policies, and as a result, requiring Warsame to work a set schedule was not unreasonable.

Moreover, as Cleveland noted on four separate occasions, Warsame had been dishonest about communications with clients. Because dishonesty in connection with employment constitutes misconduct, *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305, 307-08 (Minn. App. 1994), Cleveland's requirement of monitoring Warsame's client communications was not unreasonable.

In addition, an employer is entitled to establish reasonable policies and requests. *Sandstrom*, 372 N.W.2d at 91. ACL's requirements for Warsame to report to Cleveland regarding his work, enter time daily, reduce the use of his cell phone, spend a reasonable amount of time on projects, and reduce his errors are reasonable policies and do not impose an unreasonable burden on Warsame. Further, an employee's refusal to read and acknowledge a warning notice constitutes misconduct when the refusal was part of a series of incidents. *Cavalier v. C. Mach. Co., Inc.*, 404 N.W.2d 391, 394 (Minn. App. 1987).

Similarly, here, Warsame's refusal to sign the probation document is part of a series of actions that constituted misconduct.

Warsame contends that he was "blindsided" and "was fired without any prior warnings." But an employee is not entitled to a warning before an act can constitute misconduct. *See Del Dee Foods*, 390 N.W.2d at 418 (stating that, in certain circumstances, it is employment misconduct to be absent even once without notice to employer); *see also Frank v. Heartland Auto. Servs., Inc.*, 743 N.W.2d 626, 630-31 (Minn. App. 2008) (concluding that single act of dishonest conduct can constitute employment misconduct because employer has right to rely on integrity of employees). Therefore, we affirm the ULJ's decision that Warsame is ineligible for unemployment benefits because Cleveland discharged him for misconduct.

Affirmed.