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STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0527

Rhonda Ruhland,
Relator,

vs.

Big Island Swim & Surf, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed November 25, 2019
Affirmed
Kalitowski, Judge[*]

Department of Employment and Economic Development
File No. 36854457-3

Rhonda Ruhland, Victoria, Minnesota (pro se relator)

Big Island Swim & Surf, LLC, Wayzata, Minnesota (respondent employer)

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

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and Kalitowski, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

KALITOWSKI, Judge

In this certiorari appeal, relator challenges the unemployment-law judge's (ULJ) determination that she is ineligible for unemployment benefits because she was discharged for employment misconduct. We affirm.

FACTS

Relator Rhonda Ruhland was dismissed from her job at swimwear retailer Big Island Swim & Surf, LLC (Big Island) in late October 2018. Following her dismissal, she applied for unemployment benefits and had a hearing before a ULJ, who determined Ruhland was not entitled to unemployment benefits.

Ruhland began working for Big Island in November 2015. Following Big Island's January 2018 merger with another company, Ruhland was promoted to a position as a multi-unit manager and lead buyer, managing operations in two stores and buying accessories. She reported to the company's owners, Brittany Reger and Jennifer Cermak. Although Reger and Cermak testified as to several concerns about Ruhland due to issues with performance and insubordination, the ULJ relied solely on an incident at a trade show in August 2018 to support a finding of employment misconduct.

Regarding the trade show, Reger testified that one of Big Island's vendors who participated in the trade show was Koastal Konnections (Koastal). Ruhland had been doing work on the side for Koastal for many years. Reger stated she suspected that Ruhland was going to the trade show to work for Koastal instead of conducting Big Island business. The morning of the trade show, Reger texted Ruhland, asking if she was going to the trade show

to buy for Big Island or if she was working the trade show for Koastal. Ruhland responded that she was at the trade show for Big Island, not for Koastal.

Reger suspected that Ruhland was lying. She had asked Ruhland to perform an inventory of some product that same day and had asked Ruhland to be at a certain store by 2:30 or 3:00 for that purpose. And Reger stated that if Ruhland were really going to the trade show for Big Island, she would only need to be there for a few hours. So she watched the cameras for the store to see when Ruhland arrived. Reger testified that she did not see Ruhland arrive at the store until 6:00, and that Ruhland later changed her clock-in time at the store to 5:00. Moreover, Reger had asked Ruhland to conduct the inventory by herself, but she instead had one of the employees assist her with the inventory, which resulted in Reger having to pay that employee 90 minutes of overtime.

Cermak explained that the trade-show incident was an issue not because Ruhland was working for Koastal—they are a vendor for, not a competitor of, Big Island—but because Ruhland was being paid for that day by Big Island while she was working for Koastal. Cermak went on to say that the "worst thing" Ruhland did was work for Koastal on the day of the trade show and "submit[] pay for that day" from Big Island, which resulted in "a moment of loss of trust for her in that position." Ruhland admitted at the hearing that she went to the trade show "to go help Koastal and I also bought for Big Island," and she admitted to getting paid by Koastal for work on that day.

The ULJ determined that Ruhland was ineligible for benefits because she committed employment misconduct with the trade-show incident. Ruhland requested that the ULJ reconsider the decision, and the ULJ affirmed the decision.

D E C I S I O N

Ruhland challenges the ULJ's determination that she is ineligible for benefits. Minnesota Statutes section 268.105, subdivision 7(d) (2018) outlines our court's authority when reviewing a ULJ decision:

> (d) The Minnesota Court of Appeals may affirm the decision of the [ULJ] or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:
>
> (1) in violation of constitutional provisions;
> (2) in excess of the statutory authority or jurisdiction of the department;
> (3) made upon unlawful procedure;
> (4) affected by other error of law;
> (5) unsupported by substantial evidence in view of the entire record as submitted; or
> (6) arbitrary or capricious.

We review the ULJ's factual findings in the light most favorable to the decision and do not disturb them so long as there is evidence that reasonably supports them. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). "Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Bangtson v. Allina Med. Grp.*, 766 N.W.2d 328, 332 (Minn. App. 2009) (quotation omitted). But we review questions of law de novo. *Id.*

Ruhland argues that the ULJ erred in concluding that she committed employment misconduct. An employee discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2018). "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 (quotation omitted). And determining "whether a particular act constitutes disqualifying misconduct is a question of law." *Id.*

Employment misconduct is defined as "any intentional, negligent, or indifferent conduct" that displays either "a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee" or "a substantial lack of concern for the employment." Minn. Stat. § 268.095, subd. 6(a) (2018). "If the conduct for which the applicant was discharged involved only a single incident, that is an important fact that must be considered in deciding whether the conduct rises to the level of employment misconduct under paragraph (a)." *Id*., 6(d) (2018). The statute also defines certain conduct that is not employment misconduct. Ruhland invokes two exceptions, specifically: "simple unsatisfactory conduct" and "good faith errors in judgment if judgment was required." *Id.*, subd. 6(b) (2018).

The ULJ concluded that Ruhland committed employment misconduct because "[a]n employer is entitled to reasonably expect that its employees will put its interests first and will not represent another company while being paid by the employer," and Ruhland intentionally violated this expectation by failing to disclose that she was working the trade show for Koastal, instead telling Reger she would be working for Big Island. This conclusion was supported by the following findings of fact: (1) Ruhland worked for Koastal at the trade show; (2) Reger asked her if she was working the trade show for Koastal or buying for Big Island; (3) Ruhland said she was working for Big Island; (4) Ruhland was paid by Koastal for working the trade show; (5) Ruhland was "paid her salary for the week by Big Island."

Ruhland does not contest these findings, but asserts that she "was not compensated by Big Island . . . for any work specifically related to duties on" the day of the trade show. She argues that her actions at the trade show were "simple unsatisfactory conducts with no intentions of wrong doing," not employment misconduct. Whether her actions amount to employment misconduct is a legal question. *Stagg*, 796 N.W.2d at 315.

We conclude that Ruhland's actions constitute employment misconduct. "Dishonesty that is connected with employment may constitute misconduct." *Icenhower v. Total Auto., Inc.*, 845 N.W.2d 849, 856 (Minn. App. 2014) (quotation omitted), *review denied* (Minn. July 15, 2014); *see also Cherveny v. 10,000 Auto Parts*, 353 N.W.2d 685, 688 (Minn. App. 1984) ("Relator's dishonesty in an investigation by the employer into an alleged theft of employer's goods was misconduct sufficient to disqualify relator from unemployment compensation benefits . . . ."). And the supreme court concluded in *Wilson v. Mortg. Res. Ctr., Inc.* that misrepresenting educational attainment in a job application was a serious, intentional violation of the standards of behavior a reasonable employer has the right to expect, and thus, constituted employment misconduct. 888 N.W.2d 452, 461-62 (Minn. 2016). Accepting the ULJ's factual findings, Ruhland was aware that Reger questioned whether she was working for Koastal at a time she was expected to be working for Big Island and then lied about it. Although as a salaried employee for Big Island, Ruhland may not have been "double dipping" on hourly wages, she lied to her superiors about what she was doing and represented that she was working for Big Island when she was working hourly for Koastal.

The conduct at issue was a "single incident," which is an "important fact" in our consideration of whether the conduct amounts to employment misconduct. Minn. Stat. § 268.095, subd. 6(d). But we conclude that the dishonest conduct at issue here—especially from someone in a managerial position who is entrusted with important responsibilities—qualifies as "a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee" or "a substantial lack of concern for the employment," Minn. Stat. § 268.095, subd. 6(a), and therefore constitutes employment misconduct.

Affirmed.