STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0105

Connie J. Meier,
Relator,

vs.

Steven E. Pierce, CPA, Ltd.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed January 13, 2020
Affirmed
Johnson, Judge

Department of Employment and Economic Development
File No. 36694439-3

Connie J. Meier, Truman, Minnesota (*pro se* relator)

Steven E. Pierce, CPA, Ltd., Fairmont, Minnesota (*pro se* respondent)

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

Considered and decided by Johnson, Presiding Judge; Florey, Judge; and John P. Smith, 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

JOHNSON, Judge

Connie J. Meier sought unemployment benefits after her employment as a certified public accountant was terminated. The department of employment and economic development concluded that she is ineligible for benefits because her employment was terminated for employment misconduct. We affirm.

FACTS

Steven E. Pierce, CPA, Ltd. (doing business as Pierce Accounting and Tax Services) is an accounting firm in the city of Fairmont. The firm is owned and managed by Sara Pierce. Meier worked for the firm as a full-time certified public accountant (CPA) from December 2012 to July 2018. She was responsible for working with the firm's clients on payroll and tax matters.

Before Meier's employment was terminated, several of the firm's clients complained about her work. In May 2018, Pierce was informed by a client that Meier had acted unprofessionally at a meeting with the client and its attorneys in late April. The client reported that Meier was 15 minutes late for the meeting and acted "very strange and rude," "kept interrupting everyone," and "had food on her shirt." The same client also stated that Meier had made mistakes on its employees' W-2 forms, which resulted in errors on the employees' income tax returns, which required amended filings. The Pierce firm paid for the costs of the amended tax returns. The client threatened to discontinue its business relationship with the firm. Pierce gave Meier an oral warning after receiving this client's complaints.

In June 2018, a second client informed Meier that he had received a letter from the IRS about errors on his tax return, which was prepared by Meier. The client requested that Meier verify items on the tax return in advance of an upcoming child-support hearing. Meier reviewed the tax return but could not understand the error. She put the client's file "on the back burner" because she was busy working on tax refunds for other clients. Several weeks later, in mid-July, the client contacted Meier again because he had not heard back from her and urgently needed assistance. Meier told the client that she would talk with Pierce about the issue, but she did not do so. Meier later testified that she did not talk with Pierce about the client's problem because she believed that Pierce would be displeased. On July 26, 2018, the client contacted Pierce directly to ask why Meier had not sent him the information he had requested. Pierce later testified that Meier "failed the client" because IRS issues are deadline-driven and, thus, "usually take priority."

On July 26, 2018, a third client complained to Pierce that Meier was one week overdue in completing routine QuickBooks work. Meier was not present at work that day, which made it difficult for Pierce to respond to the client's inquiries. As it turned out, Meier was absent from work that day because she had been arrested for driving while impaired (DWI) after she hit a parked car while driving to work. Pierce learned about the nature of the incident that afternoon, after receiving the complaint from the third client.

On Monday, July 30, 2018, Pierce terminated Meier's employment. On that date, Pierce wrote a letter to Meier stating that her employment was being terminated for poor performance based on multiple clients' complaints. Pierce also informed Meier in person that her employment was being terminated. After terminating Meier's employment, Pierce

reviewed the file of a fourth client, who had complained in March 2018 about mistakes by Meier on the company's bi-weekly payroll, which needed to be redone. Pierce determined that Meier had failed to complete routine work for the fourth client.

In August 2018, Meier applied for unemployment benefits with the department of employment and economic development. The department made an initial determination that Meier is ineligible for unemployment benefits because she was discharged for employment misconduct. Meier filed an administrative appeal. An unemployment-law judge (ULJ) conducted a hearing by telephone in September 2018. Pierce appeared and testified on behalf of the accounting firm; Meier appeared and testified on her own behalf.

After the hearing, the ULJ issued a written decision in which she determined that Meier engaged in employment misconduct. The ULJ concluded, "The firm had the right to reasonably expect that Meier would appear and act professionally in meetings with clients and would show up for client meetings on time" and "would not put away a client's file without doing any work on it for several weeks when the client had made it clear that he really wanted to get the work completed." The ULJ found that Meier was chemically dependent, but, based on Meier's own testimony, the ULJ found that her chemical dependency was not the cause of her poor work performance. Accordingly, the ULJ concluded that the firm discharged Meier for employment misconduct and that she is ineligible for unemployment benefits. Meier requested reconsideration, but the ULJ denied the request and affirmed the prior ruling.

Meier appeals by way of a petition for a writ of certiorari.

D E C I S I O N

Meier argues that the ULJ erred by finding that she is ineligible for unemployment benefits because she was discharged for employment misconduct.

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 (2018); *Stagg*, 796 N.W.2d at 314. "Employment misconduct" is defined by statute to mean "any intentional, negligent, or indifferent conduct, on the job or off the job, that is a serious violation of the standards of behavior the employer has the right to reasonably expect of an employee." Minn. Stat. § 268.095, subd. 6(a) (Supp. 2019). But certain conduct is not within the definition of employment misconduct, including the following:

> (2) conduct that was a consequence of the applicant's inefficiency or inadvertence;
>
> (3) simple unsatisfactory conduct; [or]
>
> . . .
>
> (9) conduct that was a consequence of the applicant's chemical dependency, unless the applicant was previously diagnosed chemically dependent or had treatment for chemical dependency, and since that diagnosis or treatment has failed to make consistent efforts to control the chemical dependency . . . .

Minn. Stat. § 268.095, subd. 6(b)(2), (3), (9) (Supp. 2019). The statutory definition of misconduct is exclusive such that "no other definition applies" to an application for

unemployment benefits. *Id.*, subd. 6(e) (Supp. 2019); *see also Wilson v. Mortgage Resource Ctr., Inc.*, 888 N.W.2d 452, 456-60 (Minn. 2016).

This court reviews a ULJ's decision denying unemployment benefits to determine if the findings, inferences, conclusion, or decision are unlawful or in excess of the ULJ's authority, unsupported by substantial evidence, or arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2018). We review a ULJ's findings of fact "in the light most favorable to the decision" to determine whether "there is evidence in the record that reasonably tends to sustain them." *Stagg*, 796 N.W.2d at 315 (quotation omitted). We apply a *de novo* standard of review to mixed questions of fact and law, such as whether an employee's conduct "disqualifies the employee from unemployment benefits." *Id.* (quotation omitted). "Whether the employee committed a particular act is a question of fact." *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Meier argues that the ULJ erred for two reasons.

A.

Meier first argues that the ULJ erred by concluding that her conduct is not within the chemical-dependency exception to employment misconduct.

As stated above, the definition of employment misconduct includes an exception for "conduct that was a consequence of the applicant's chemical dependency." Minn. Stat. § 268.095, subd. 6(b)(9) (Supp. 2019). This exception is itself subject to two exceptions. The first applies if "the applicant was previously diagnosed chemically dependent or had treatment for chemical dependency, and since that diagnosis or treatment has failed to make consistent efforts to control the chemical dependency." *Id.* The second applies if the

applicant engaged in "conduct in violation of sections 169A.20, 169A.31, 169A.50 to 169A.53, or 171.177 that adversely affects the employment." *Id.*, subd. 6(c) (Supp. 2019). Section 169A.20 of the Minnesota Statutes prohibits driving while impaired. *See* Minn. Stat. § 169A.20 (2018).

The ULJ made the following findings concerning Meier's chemical dependency: "Meier is chemically dependent. None of the conduct described above, except for the drinking . . . that led to her DWI, was a consequence of chemical dependency. Meier had not been diagnosed with or treated for alcoholism before July 25, 2018." These findings appear to be based, in part, on the portion of Meier's testimony in which she said, "I don't think the work performance is misconduct, and I don't think that chemical dependency had any effect on my work performance because I don't think it was poor." These findings make clear that, to the extent that Pierce terminated Meier's employment because of her accounting mistakes, the discharge was not for "conduct that was a consequence of the applicant's chemical dependency" because her accounting mistakes were not a consequence of her chemical dependency. *See* Minn. Stat. § 268.095, subd. 6(b)(9) (Supp. 2019). The ULJ made additional findings concerning the DWI incident, as follows:

> Although Meier also violated section 169A.20 on July 26, a preponderance of the evidence does not show that the DWI interfered with or adversely affected the employment apart from causing Meier's absence on July 26. And the DWI was not, by itself, the reason Pierce decided to discharge Meier. Rather, Pierce discharged Meier in part because she believed the DWI was evidence that Meier had a drinking problem or poor judgment, and Pierce did not trust Meier to handle the responsibilities of her job if she had a drinking problem or poor judgment that drove her to drink to excess. To the extent this concern played a part in Pierce's decision to discharge Meier,

> Meier's drinking was not employment misconduct because it was a consequence of chemical dependency.

These findings indicate that, to the extent that Pierce terminated Meier's employment because she was arrested for DWI, the discharge was not for "conduct that was a consequence of the applicant's chemical dependency," *see* Minn. Stat. § 268.095, subd. 6(b)(9) (Supp. 2019), because she was discharged for "conduct in violation of section[] 169A.20 . . . that adversely affect[ed] the employment," *see id.*, subd. 6(c) (Supp. 2019).

On appeal, Meier asserts that, after speaking with a chemical-dependency counselor, she now believes that her drinking affected her work performance. But she acknowledges that she testified at the hearing that her work performance was not affected by her drinking. Nonetheless, she contends that Pierce believed that her drinking had affected her work performance and that Pierce's belief is sufficient to prove that the firm discharged her for conduct that was a consequence of her chemical dependency. Meier's argument fails because it requires this court to disregard her testimony. Even if Pierce believed that Meier's poor work performance was a consequence of chemical dependency, the ULJ's findings concerning the consequences of Meier's chemical dependency would not be erroneous because "there is evidence in the record that reasonably tends to sustain them." *See Stagg*, 796 N.W.2d at 315 (quotation omitted). As stated above, to the extent that Pierce believed that Meier's absence from work on July 26 was a consequence of chemical dependency, that belief was based on Meier's apparent violation of the DWI statute, which means that Meier was not discharged for "conduct that was a consequence of the

applicant's chemical dependency," *see* Minn. Stat. § 268.095, subd. 6(b)(9) (Supp. 2019), but, rather, was discharged for "conduct in violation of section[] 169A.20 . . . that adversely affect[ed] the employment," *see id.*, subd. 6(c) (Supp. 2019). Accordingly, the ULJ's reasoning is consistent with both the law and the evidentiary record.

Thus, the ULJ did not err by concluding that Meier did not satisfy the chemical-dependency exception to the definition of misconduct.

B.

Meier also argues, in the alternative, that the ULJ erred by concluding that her work performance is within the definition of employment misconduct.

Meier contends that her conduct was not employment misconduct because it was "simple unsatisfactory conduct," which is an exception to the definition of misconduct. *See* Minn. Stat. § 268.095, subd. 6(b)(3) (Supp. 2019). She does not elaborate on the reasons why her conduct should be deemed simple unsatisfactory conduct rather than employment misconduct. This court applied the simple-unsatisfactory-conduct exception in *Bray v. Dogs & Cats Ltd.*, 679 N.W.2d 182 (Minn. App. 2004). In that case, the employee struggled to meet her employer's expectations regarding filing deadlines, arranging meetings, disciplining workers, and managing schedules. *Id.* at 184. This court determined that the simple-unsatisfactory-conduct exception applied because the employee "attempted to be a good employee but just wasn't up to the job and was unable to perform her duties to the satisfaction of the employer." *Id.* at 185.

The facts of this case are distinguishable. Meier's performance was unacceptable to the client with whom she attended a meeting. Meier consciously disregarded another

client's requests for assistance with a problem arising from a tax return she had filed, and she did not seek assistance from Pierce, even after she told the client that she would do so. Some of Meier's work for other clients was so flawed that it needed to be redone. Meier's conduct was much worse than the conduct of the appellant in *Bray* because it was far below the standards of performance that the firm had a right to expect.

Meier also contends that her conduct was not employment misconduct because it was mere "inefficiency and inadvertence," which also is an exception to the definition of misconduct. *See* Minn. Stat. § 268.095, subd. 6(b)(2) (Supp. 2019). In this context, "inadvertence" means "'an oversight or a slip'" or "'[n]ot duly attentive' or '[m]arked by unintentional lack of care.'" *Dourney v. CMAK Corp.*, 796 N.W.2d 537, 540 (Minn. App. 2011) (alterations in original) (quoting *The American Heritage Dictionary of the English Language* 910 (3d ed. 1992)). The ULJ considered the inefficiency-and-inadvertence exception with respect to the second client's tax issues and concluded that Meier's testimony was not credible and that her "neglect of the client's request was negligent or indifferent and not the consequence of mere inefficiency or inadvertence." This determination was based in part on Meier's admission that she could have taken steps to find a solution to the client's problem. In her appellate brief, Meier repeats many of the explanations she provided to the ULJ. She has not demonstrated that the ULJ erred by concluding that she committed "a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee." *See* Minn. Stat. § 268.095, subd. 6(a) (Supp. 2019).

Meier also contends that her conduct was not employment misconduct because she did not intend to harm her employer. "Employment misconduct" is defined by statute to include conduct that is "intentional, negligent, or indifferent." *Id.* The ULJ found that "Meier's neglect of the [second] client's request was negligent or indifferent." The ULJ's finding of employment misconduct is proper even though she did not find that Meier intentionally violated her employer's standards.

Thus, the ULJ did not err by concluding that Meier engaged in employment misconduct.

In sum, the ULJ did not err by concluding that Meier is ineligible for unemployment benefits.

Affirmed.