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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0516**

Jennifer S. Bild,
Relator,

vs.

Agape Healthcare Services Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed January 27, 2020
Affirmed
Cochran, Judge**

Department of Employment and Economic Development
File No. 36931506-3

Jennifer S. Bild, Forest Lake, Minnesota (pro se relator)

Agape Healthcare Services Inc., Elk River, Minnesota (respondent employer)

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

Considered and decided by Reilly, Presiding Judge; Bjorkman, Judge; and
Cochran, Judge.

UNPUBLISHED OPINION

COCHRAN, Judge

Relator Jennifer S. Bild challenges the determination of an unemployment law judge (ULJ) that she is ineligible for unemployment benefits because she was discharged for employment misconduct. Bild argues that the ULJ made erroneous factual findings and incorrectly determined that she engaged in employment misconduct. Because the ULJ's factual findings are supported by substantial evidence in the record, and Bild's actions constitute employment misconduct, we affirm.

FACTS

Agape Health Services, Inc. (Agape) is an in-home health-care service provider. Agape hired Bild in April 2018 as a part-time director of nursing (DON). As a DON, Bild was expected to work three days per week for five hours each day, for a total of 15 hours per week. Bild was required to perform DON work at Agape's office, not from home. In addition to her DON work, Bild performed part-time personal care assistant (PCA) services for Agape. As a PCA, Bild provided in-home care to clients.

When Bild was first hired, she performed her DON duties as required for approximately two weeks. After the first two weeks, Bild estimates that she was in the office "maybe five to ten out of the fifteen" hours each week. Before going in to the office, Bild would call the office manager and ask if there was "anything there to do." The office manager told Bild that she needed to work her full 15 hours in the office and that she could not work from home.

On June 26, 2018, Bild's husband died. Bild did not formally request time off, but communicated with Agape that she was going to be absent. Due to her husband's death, Bild did not do any DON work in July. Agape was sympathetic to Bild's personal issues and waited for her to return to work.

At some point in July, Bild came into the office with PCA time sheets. The time sheets were signed by Bild but not by the client, even though Agape's standard practice required the client's signature on the time sheet along with the PCA's signature. Agape required the client's signature along with the PCA's signature to conform to state PCA rules. Agape did not accept the time sheets and instead told Bild that she needed to get the time sheets signed by the client before they could pay her for the time. Because Bild never obtained client signatures on the time sheets, Agape did not pay Bild for the PCA time reflected on those time sheets. Agape also did not pay Bild for DON hours that Bild alleged she worked from home. But Agape did pay Bild for DON work that she did in the office and for PCA work that was supported by time sheets with the necessary client signatures.

Bild filed a complaint with the Minnesota Department of Labor and Industry (DLI) alleging that Agape had not paid her for some of the hours that she had worked. DLI called Agape and informed Agape that Bild had filed a claim for unpaid wages. Agape provided its time sheet records, and DLI did not pursue the complaint. After receiving the call from DLI, Agape's president sent an email to Bild informing her that he had received a call from DLI about the complaint, telling her that he spoke with DLI about her "failure to turn in proper timecards," and asking her to return her office keys and company property.

On September 20, 2018, Agape sent Bild a letter about her unexcused absences. The letter noted that Bild had continuous absences from September 6 through September 20, 2018, and stated that Bild had three business days to produce “just cause” for her unexcused absences or Agape would terminate her services as a “voluntary resignation.” Bild called Agape’s president after receiving the letter but did not provide an explanation for her absences.

Bild applied for unemployment benefits with respondent Minnesota Department of Employment and Economic Development (DEED). In her application, Bild stated that she stopped working for Agape because Agape had not paid her for hours that she had worked. DEED issued a determination of eligibility, concluding that Bild was eligible for unemployment benefits after being discharged by Agape because Bild’s “dissatisfaction with being unpaid by the employer is not employment misconduct.” Agape appealed the determination and a ULJ conducted a de novo hearing. Bild, Agape’s president, and Agape’s office manager testified.

In her testimony, Bild explained that she stopped coming into work because Agape had not paid her for some of the hours that she had worked. Bild claimed that she was not paid for DON work that she did away from the office and that she was not paid for certain PCA work.

With regard to the DON work, both Agape’s president and the office manager testified that Bild was expected to report to the office for her DON hours. Bild acknowledged that she did not work the required 15 hours per week in the office, but stated that she was working away from the office as a DON. The president and office manager

acknowledged that Bild had completed some client intake hours as DON away from the office, but clarified that intake work requires her to report to the office beforehand. The office manager also testified that Bild's DON hours were recorded by logging into the computer system at the office and that Bild had been given a computer password for this purpose. The office manager explained that Agape downloaded the computer login times to create the payroll. The office manager further testified that Bild had been paid for her DON hours logged through the computer since she started in April. Agape did not pay Bild for her DON work-at-home hours. Bild disputed Agape's claim that she had recorded her DON hours on the office computer. Bild testified that she did not have a password and never logged into her computer at the office. Bild also testified that she had submitted hand-written time sheets for DON hours in the past.

In addition to addressing the DON hours, both Agape's witnesses and Bild testified about Bild's alleged PCA hours. Agape's office manager testified that Bild brought in a number of time sheets that were not signed by the client and wanted to be paid for them. She further testified that Agape cannot accept unsigned time sheets because the state requires the client's signature on each time sheet to show that the client received care from the PCA. The office manager stated that because the time sheets were never signed by the client, Bild was not paid for the time included on those time sheets.

Agape's president also testified about Bild's work as a PCA for Agape. The president explained that Bild claimed to be providing PCA services to a person (T.K.) who lived in Bild's home, but T.K. informed Agape that Bild never provided any PCA services to her. Bild acknowledged that T.K. lived in her home, but denied doing PCA work for

T.K. and denied submitting any time sheets for work for T.K. Bild further testified that the time sheets she submitted were for PCA services that she provided to a man who lived in White Bear Lake. Agape's president testified that the White Bear Lake man was actually a client of Bild's late husband, not a client of Bild's, and that it was her husband who did PCA work for the man.

In a written order, the ULJ found that Bild was not doing her DON job as required and was refusing to come to work unless Agape paid her for hours that she did not work. Where there was conflicting testimony, the ULJ determined that Agape's witnesses were more credible than Bild. Based on the ULJ's factual findings, the ULJ concluded that Bild was discharged because of employment misconduct, and, therefore, Bild was ineligible for unemployment benefits under Minn. Stat. § 268.095, subd. 4 (2018). Bild requested reconsideration, and the ULJ affirmed the initial decision with a modification.

Bild appeals.

D E C I S I O N

In her pro se brief, Bild challenges the ULJ's determination that she is ineligible for unemployment benefits. Bild argues that (1) the ULJ's factual findings are unsupported by the record and (2) her actions do not constitute misconduct. We address each argument in turn.

I. The ULJ's factual findings are substantially supported by the record.

Bild disputes multiple factual findings made by the ULJ. We review a ULJ's findings of fact "in the light most favorable to the ULJ's decision and will rely on findings that are substantially supported by the record." *Fay v. Dep't of Emp't & Econ. Dev.*,

860 N.W.2d 385, 387 (Minn. App. 2015) (quotation omitted). We also defer 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, 532-33 (Minn. App. 2007). When the credibility of a witness has a "significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1a(a) (2018).

Here, the ULJ determined that Bild was not doing her DON job, was refusing to come to work unless Agape paid her for hours she did not work, and made a baseless complaint that she was not paid. These findings are supported by the testimony of Agape's witnesses that Bild stopped coming into the office to do her DON work as required and that Agape paid Bild for her DON work based on the hours that she was logged into Agape's computer system. The ULJ's findings are also consistent with Bild's testimony that she stopped coming into work and only came into the office "five to ten out of the fifteen" hours per week.

The ULJ also found that Bild submitted unsigned time sheets and did not complete PCA hours that she alleged she completed. These findings are also supported by the record. Agape's office manager and president both testified that Bild failed to submit signed PCA time sheets after being told that the time sheets needed to be signed by the client. And a person who Bild claimed was her PCA client, T.K., informed Agape in writing that Bild never provided any PCA services for her.

Bild contests these findings, arguing that (1) she never received a password for the computer to complete DON hours; (2) she was allowed to work at home as a DON; and

(3) she was not paid for her PCA work. In essence, she argues that the ULJ erred by rejecting her version of events and by determining that Agape's witnesses were more credible.

We defer to the ULJ's credibility determinations on these matters because the ULJ provided sound reasons for finding Agape's witnesses more credible than Bild. *See Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006) (concluding that credibility determinations are the "exclusive province of the ULJ and will not be disturbed on appeal"); Minn. Stat. § 268.105, subd. 1a(a) (stating that the ULJ "must set out the reason for crediting or discrediting" testimony). The ULJ determined that the testimony of Agape's president and office manager was "more credible than Bild's testimony, because it is a more convincing and likely explanation of events, they corroborate each other, and Bild has nothing to support her allegations."

In her brief, Bild also appears to ask this court to make new credibility determinations and to adopt new findings of fact, but that is not our role. *Skarhus*, 721 N.W.2d at 345. Our role is to determine whether the ULJ adequately explained the reasons for her credibility determinations and to determine whether the ULJ's factual findings are supported by the record. *Id.* at 344 (stating that appellate courts "will not disturb the ULJ's factual findings when the evidence substantially sustains them"). Viewing the evidence in the light most favorable to the ULJ's decision, we conclude that the facts found by the ULJ are substantially supported by the record and that the ULJ adequately set forth sound reasons for determining that Bild was not as credible as Agape's witnesses.

II. Bild's actions constitute employment misconduct.

We turn next to whether Bild was discharged because of employment misconduct, making her ineligible for unemployment benefits. *See* Minn. Stat. § 268.095, subd. 4(1). We review a ULJ's determination that an applicant is ineligible for unemployment benefits *de novo*. *Fay*, 860 N.W.2d at 387.

Employment misconduct is intentional, negligent, or indifferent conduct “that is a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee.” Minn. Stat. § 268.095, subd. 6(a) (Supp. 2019).¹ The Minnesota Supreme Court has held that “[a]s a general rule, refusing to abide by an employer's reasonable policies and requests amounts to disqualifying misconduct.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002); *see also* *Cunningham v. Wal-Mart Assocs., Inc.*, 809 N.W.2d 231, 235 (Minn. App. 2011) (indicating that “[a]n employee's refusal to abide by the employer's reasonable policies ordinarily constitutes employment misconduct.”).

We conclude that Bild's actions demonstrate misconduct for two reasons. First, Bild failed to report to work. Agape has a right to reasonably expect Bild to report to the office as DON and Bild admits that she failed to report to the office for the required fifteen hours per week after the first two weeks of her employment. Second, Bild did not submit

¹ The version of Minn. Stat. §268.095, subd. 6(a) that was in effect at the time of the ULJ's decision was amended in 2019 to remove “a substantial lack of concern for the employment” from the definition of employment misconduct. Neither the ULJ's analysis nor our analysis relies on the “substantial lack of concern” language that was removed from the statute.

her hours worked in the manner required by Agape. For DON hours, Bild failed to use the required computer system. For PCA work, Bild submitted time sheets without the required client signatures. It is reasonable for Agape to expect Bild to submit client-signed time sheets for any work she did as a PCA to ensure that the patient is getting the care that the employee claims was provided and to ensure that Agape is in compliance with state rules for PCA services. *See* Minn. R. 9505.2175, subp. 7(H)(9) (2017). Collectively, these actions are a “serious violation of the standards of behavior the employer has the right to reasonably expect.” Minn. Stat. § 268.095, subd. 6(a).

Because Bild engaged in employment misconduct, and was discharged on that basis, Bild is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1).

Affirmed.