STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1524

Jack Grew,
Relator,

vs.

Island Investment Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed May 18, 2020
Affirmed
Bratvold, Judge

Department of Employment and Economic Development
File No. 37392307-3

Jack Grew, Superior, Wisconsin (pro se relator)

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

Island Investment, Inc., Duluth, Minnesota (respondent employer)

Considered and decided by Bratvold, Presiding Judge; Reyes, Judge; and Bryan, Judge.

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

BRATVOLD, Judge

In this certiorari appeal, pro se relator challenges an unemployment-law judge (ULJ)'s determination that relator is ineligible for unemployment benefits because he was discharged for employment misconduct. Because caselaw and record evidence supports the ULJ's determination that relator committed misconduct when he refused to perform an assigned task, we affirm.

FACTS

The following summarizes the ULJ's findings of fact. Relator Jack Grew began working at Island Investment Inc. (Island Investment), as a full-time staff accountant on December 3, 2018. Island Investment manages "several hotels and other properties." Island Investment hired Grew to replace an accountant who planned to retire on May 31, 2019. The retiring accountant supervised Grew.

In March 2019, Grew's performance review stated he "was catching on quickly" and "the accounting department would be in good hands." Grew voiced no concerns at the time of his review.

On May 10, Grew emailed one of Island Investment's owners, K.K., and stated he intended to resign because he was "nowhere near ready to take on the responsibilities." Grew added: "If we can't convince [retiring accountant] to stay working for another year (maybe less); I regret to inform you that I will be leaving your company when [retiring accountant] retires on May 31."

Two days later, K.K. responded to Grew and stated that the retiring accountant could "stay on a few more months." K.K. stated, "I hope you will consider at least staying on for a while." The same day, Grew told K.K., "I figure I could then stay on board a little longer too, but cannot guarantee I'd still be there after [retiring accountant] does leave."

On May 14, the retiring accountant assigned a project to Grew, but Grew refused to do it. The project was to complete a financial statement for one of Island Investment's companies. Island Investment ended Grew's employment the same day. K.K.'s letter to Grew stated, "This letter is being given to you to confirm that you have chosen to resign from your position here at Island Investment, Inc. As stated in your email to [K.K.] on Friday May 10, 2019, you are not ready for the responsibilities of the job."

Grew applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) denied Grew's request, reasoning that Grew had quit. Grew appealed the determination. On July 10, the ULJ conducted an evidentiary hearing by telephone, but continued the hearing because Grew may not have received all the exhibits.

At the continued hearing on August 1, 2019, K.K., an Island Investment human-resources employee, and Grew, appeared by phone and the ULJ received testimony and exhibits, including emails and Grew's performance review. K.K. testified, "I don't feel that we fired [Grew]. We just let him leave because he resigned." K.K. also testified that Grew's employment ended because he "indicated he was leaving and he refused to do another little project we felt there was no need to keep him on any longer."

Grew testified that he "refused to do that project" and explained that "[t]hey were having their meeting on what they're gonna do with me. So, at that particular time I was asked to do that project. I, I could not think. I was, I was actually kind of down in the dumps with the whole situation so that's why I did not . . . do that project." Grew also testified that no medical reason prevented him from performing the project and stated, "[I]f you're sitting there about ready [to find out] if you're gonna get fired or not, I mean . . . how [are] you supposed to concentrate through that?"

On August 5, 2019, the ULJ issued written findings of fact and decision, determining that Grew did not quit but was discharged because of employment misconduct because he refused "to comply with reasonable instructions." The ULJ reasoned that Grew's testimony that he "was down in the dumps and did not know his job status" was "illogical" because two days prior, he had agreed by email to remain at Island Investment for at least a few more months. The ULJ determined that "[t]here is no evidence that anyone told him, before he refused the work assigned by [retiring accountant], that he was in fact going to be terminated earlier." Grew filed a request for reconsideration and the ULJ affirmed its decision.

This certiorari appeal follows.

D E C I S I O N

This court may affirm, reverse, remand for further proceedings, or modify the ULJ's decision if it violates the constitution, exceeds statutory authority or jurisdiction of DEED, is based on unlawful procedure, is affected by other error of law, is unsupported by substantial evidence, or is arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2018).

An individual discharged for employment misconduct is not eligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2018). Minnesota Statutes define employment misconduct:

> (a) Employment misconduct means 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.

Minn. Stat. § 268.095, subd. 6 (2018).[1] Whether an employee committed misconduct is a mixed question of fact and law. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). Appellate courts review a ULJ's factual findings that an employee committed a particular act to ensure "there is evidence in the record that reasonably tends to sustain them." *Id.* Whether a particular act is employment misconduct is a question of law that this court reviews de novo. *Id.* This court reviews a ULJ's findings of fact "in the light most favorable to the decision" and defers "to the ULJ when reviewing credibility and conflicting evidence." *Lamah v. Doherty Emp't Grp., Inc.*, 737 N.W.2d 595, 598 (Minn. App. 2007).

On appeal, Grew challenges the ULJ's legal determination that he engaged in employment misconduct. Employment misconduct has two elements. First, Grew's

[1] Minn. Stat. § 268.095, subd. 6, was amended and became effective October 2019, after the ULJ's decision. The amendment removes the second prong of employment misconduct, "a substantial lack of concern for the employment." 2019 Minn. Laws 1st Spec. Sess. ch. 7, art. 7, § 9, at 1371. We apply the law in effect at the time of the ULJ's decision.

conduct must have been "intentional, negligent, or indifferent." Minn. Stat. § 268.095, subd. 6(a). Grew admitted that he refused to work on the assigned project, therefore, his conduct was intentional. *See Houston v. Int'l Data Transfer Corp.*, 645 N.W.2d 144, 149 (Minn. 2002) (stating that conduct is intentional if it is "deliberate").

Second, Grew's conduct must amount to "a serious violation" of the behavior that Island Investment reasonably expected.[2] Minn. Stat. § 268.095, subd. 6(a)(1). The supreme court has stated that in this context, "serious" is "synonymous with 'important.'" *Wilson v. Mortg. Res. Ctr. Inc.*, 888 N.W.2d 452, 459 (Minn. 2016) (citing *Merriam-Webster's Collegiate Dictionary* 1066 (10th ed. 2001)). *Wilson* reversed this court and affirmed a ULJ's determination that Wilson committed employment misconduct when she filled out a form by circling "12" as her highest grade completed and writing that she had received a GED, even though she had only completed the 11th grade. *Id.* at 454, 461. The supreme court agreed with the ULJ that Wilson's misrepresentation about her education level was a serious violation of the employer's "right to reasonably expect that applicants will tell the truth during the employment process." *Id.* at 462.

In *Vargas v. Northwest Area Foundation*, this court considered whether a relator's one-time refusal to participate in an improvement plan constituted misconduct. 673 N.W.2d 200 (Minn. App. 2004), *review denied* (Minn. Mar. 30, 2004). We stated that "[t]he general rule is that if the request of the employer is reasonable and does not impose

[2] Alternatively, misconduct occurs when an employee shows a "substantial lack of concern for the employment." Minn. Stat. § 268.095, subd. 6(a)(2). Because the ULJ determined that Grew's conduct was a "serious violation" of his employer's reasonable standards, we do not consider this alternative definition.

an unreasonable burden on the employee, the employee's refusal to abide by the request constitutes misconduct." *Id.* at 206.

The ULJ's determination follows *Wilson* and *Vargas*. Grew's refusal to perform an assigned task is a serious violation because completing assigned work is an important and essential part of an employee performing his or her job duties. Island Investment could reasonably expect that Grew would perform assigned tasks, and Grew's refusal to do so constituted misconduct.

Next, we consider that Grew refused to perform an assigned project on only one occasion. A single incident may be sufficient to establish misconduct. When an individual is discharged for conduct that "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." Minn. Stat. § 268.095, subd. 6(d).

DEED argues that Grew's one-time refusal qualifies as employment misconduct and relies on *Daniels v. Gnan Trucking*, 352 N.W.2d 815 (Minn. App. 1984) and *McGowan v. Exec. Exp. Transp. Enter., Inc.*, 420 N.W.2d 592 (Minn. 1988).

In *Daniels*, relator was a semi-truck driver and refused to unload goods from his semi-truck trailer. 352 N.W.2d at 816. Relator and the employer had agreed that relator was "required to assist in unloading," and that relator had unloaded trailers on earlier occasions. *Id.* Relator argued that "he was merely required to assist in unloading and not to unload alone." *Id.* This court affirmed the ULJ's determination that relator's refusal amounted to employment misconduct because it was "a deliberate act of insubordination rather than a single 'hot headed' incident." *Id.*

In *McGowan*, relator was a delivery driver and refused to pick up her supervisor's personal prescription. 420 N.W.2d at 593. The employer was a small, family-owned freight delivery service. *Id.* Relator stated that picking up the prescription was not within her job duties. *Id.* The employer disagreed, and when relator refused to pick up the prescription after a second request, the employer discharged relator. *Id.* at 594. The supreme court affirmed the ULJ's misconduct determination, stating that "[o]ne in charge of a business must be allowed to expect that reasonable orders will be followed." *Id.* at 596.

These cases are instructive because, on review of a ULJ's decision, both appellate courts determined that the employee's refusal to perform *one* requested task was employment misconduct. Similarly, Grew's supervisor asked him to perform a project and he refused. Grew's refusal is no different from the relators' conduct in *Daniels* or *McGowan*. "A single incident can constitute misconduct when an employee deliberately chooses a course of conduct that is adverse to the employer." *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 806 (Minn. 2002). We conclude the ULJ's determination that Grew committed employment misconduct is supported by caselaw and evidence.

Grew makes three arguments about why his conduct does not constitute misconduct. First, Grew argues that when he refused the assignment, he knew that K.K. and others were meeting to "determine his fate," and that the ULJ's factual finding that "no one told him the company was meeting for this purpose," is "false." Grew testified that an employee had told him about the meeting. Even if the ULJ erred in finding that "no one told" Grew about the meeting, Grew was not prejudiced because the meeting did not excuse Grew's misconduct.

Second, Grew argues that the ULJ erred when he stated, "[Even] assuming [Grew] had some reason to believe" that the company was meeting to discuss his termination, "that should not have prevented him from working until he knew the outcome." Grew argues that this amounts to a "false" finding because he continued to work on other projects after rejecting the new assignment. But Grew never testified that he completed other work after rejecting the project. The record evidence establishes the work that Grew *failed* to perform on May 14, but not any work that he *actually* performed on the same day. Thus, the ULJ's finding is supported by the record. *See Stagg*, 796 N.W.2d at 315 (stating a ULJ's factual findings should not be disturbed if record evidence "reasonably tends to sustain them").

Additionally, whether Grew performed other work is not relevant to whether Grew committed employment misconduct by refusing to perform the assigned project. Grew's refusal to perform a specific task is enough to establish misconduct. *See McGowan*, 420 N.W.2d at 594 (determining relator's refusal to perform one request by employer amounted to employment misconduct).

Lastly, Grew argues that "[retiring accountant] said it was OK that I didn't work on the project until after the company meeting and my fate was determined." But the record lacks any evidence to support Grew's claim. In short, Grew's arguments are not legal arguments that undercut the ULJ's determination that he was terminated for employment misconduct. Instead, Grew's arguments are excuses for why he did not perform the assigned project. We conclude that the ULJ's determination is supported by caselaw and record evidence.

Affirmed.