STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1177

Teresa M. Lentz,
Relator,

vs.

Fairview Health Services,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed June 14, 2021
Affirmed
Johnson, Judge

Department of Employment and Economic Development
File No. 38019144-3

Teresa M. Lentz, Elk River, Minnesota (*pro se* relator)

Fairview Health Services, Minneapolis, Minnesota (respondent employer)

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

Considered and decided by Slieter, Presiding Judge; Johnson, Judge; and Hooten, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Teresa M. Lentz was terminated from her job as a pharmacy technician because she refused to comply with her employer's request that she complete an application for a

background study by a state government agency that licenses her employer's facility. Lentz applied for unemployment benefits. The department of employment and economic development determined that she is ineligible because she was discharged for employment misconduct. An unemployment-law judge upheld that determination. We affirm.

FACTS

Lentz was employed as an in-patient pharmacy technician for Fairview Health Services from 1991 to 2019. The Minnesota Department of Human Services (DHS) is required by state law to conduct a background study of all persons employed by certain state-licensed facilities who will have "direct contact with" persons served by the facility. Minn. Stat. §§ 144.057, subd. 1(1), 245C.03, subd. 1(a)(3) (2020). Fairview has established a policy requiring all employees working in its licensed facilities to complete a background study because any employee might have direct contact with patients and members of the public. A background study of Lentz was done in 1996. But Fairview inadvertently lost the electronic information about the background studies of numerous employees in 2018 when it upgraded a computer system. Fairview decided to require all employees whose background-study information was lost to apply for new background studies.

In February 2019, Lentz and other Fairview employees received an e-mail message from Fairview's human-resources department informing the employees that they were required to complete an online application for a background study, which could be done in approximately ten minutes. The e-mail message explained that DHS was conducting an

audit to ensure compliance with state law and that the employees receiving the message were required to complete the application within six days.

Lentz did not promptly complete the application. In April 2019, Lentz's supervisor sent her an e-mail message to ask whether she had done so. Lentz responded by writing, "I have had a prior background check done through MN DHS." In May 2019, Fairview's human-resources department sent another e-mail message to Lentz and other employees, stating that they had ten additional days to complete the online application. Lentz responded with an e-mail that stated, "Fairview needs to initiate the background check if it is required for the job." Approximately one week later, a human-resources representative followed up with an e-mail message directly to Lentz because her application had not yet been received. Lentz again wrote that, in her view, Fairview (not Lentz) was required to initiate the background check.

In mid-October 2019, Lentz was given additional opportunities to complete the application. Lentz's supervisor sent her an e-mail message saying that Lentz would be removed from the work schedule if she did not complete the background-study application. Lentz maintained that Fairview is responsible for initiating a request for a background study. One week later, a human-resources representative sent an e-mail message to Lentz saying that she would be removed from the work schedule if she did not complete the application by October 25, 2019, and that she could be terminated if she did not do so within 30 days. On October 28, 2019, Lentz's supervisor sent her home because she had not completed the application. Later that day and two days later, the supervisor sent Lentz e-mail messages stating that Lentz could return to work if she completed the application.

Lentz did not complete the application. In November 2019, Fairview terminated Lentz's employment.

In February 2020, Lentz applied for unemployment benefits. The department made an initial determination that she is ineligible for unemployment benefits because Fairview discharged her for employment misconduct. Lentz filed an administrative appeal. An unemployment-law judge (ULJ) conducted a hearing by telephone in May 2020. Fairview was represented by a human-resources representative, a background-study specialist, and Lentz's supervisor, all of whom testified on behalf of the company. Lentz testified on her own behalf. After the hearing, the ULJ issued a written decision in which he determined that Lentz had engaged in employment misconduct and, thus, is ineligible for unemployment benefits. Lentz requested reconsideration, and the ULJ affirmed his prior ruling. Lentz now appeals by way of a petition for a writ of certiorari.

DECISION

Lentz argues that the ULJ erred by concluding 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(1) (2020); *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 the employee." Minn. Stat. § 268.095, subd. 6(a). The statutory definition of misconduct is exclusive such that "no other definition applies" to an application for unemployment benefits. *Id.*, subd. 6(e); *see also Wilson v. Mortgage Res. Ctr., Inc.*, 888 N.W.2d 452, 458-59 (Minn. 2016).

"An employer has a right to expect that its employees will abide by reasonable instructions and directions." *Vargas v. Northwest Area Found.*, 673 N.W.2d 200, 206 (Minn. App. 2004), *review denied* (Minn. Mar. 30, 2004). In general, "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 McGowan v. Executive Express Transp. Enters., Inc.*, 420 N.W.2d 592, 596 (Minn. 1988). "[W]hat is reasonable will vary according to the circumstances of each case." *Vargas*, 673 N.W.2d at 206 (quotation omitted). "When an employee's refusal to carry out a directive of the employer is deliberate, calculated, and intentional, then the refusal is misconduct." *Schmidgall*, 644 N.W.2d at 806. "[W]hether an employee engaged in conduct that disqualifies him or her from unemployment benefits is a mixed question of fact and law." *Wilson*, 888 N.W.2d at 460. This court applies a *de novo* standard of review to a ULJ's determination that a particular act constitutes disqualifying conduct. *Id.*

Lentz contends that she should not have been terminated because she already had a background study in 1996 and because, she asserts, Fairview is required to initiate a request for another background study. In essence, Lentz challenges the reasonableness of Fairview's requirement that she complete a background-study application. The ULJ found

that Fairview's requirement was reasonable because the requirement was a means of complying with state law and with DHS's request, because the application was estimated to take only ten minutes of time, and because the privacy of Lentz's information was not at risk.

The evidence supports the ULJ's finding that Fairview's requirement was reasonable. DHS is required by law to conduct background studies on employees who have direct contact with persons served by licensed facilities. Minn. Stat. §§ 144.057, subd. 1(1), 245C.03, subd. 1(a)(3). Fairview requires all employees in its licensed facilities to undergo a background study. Lentz was one of many employees, including Lentz's supervisor, who were required to undergo a background study in 2019. The background-study application was estimated by DHS to take only ten minutes of time. Lentz's supervisor offered to assist Lentz. Lentz was given multiple extensions of the deadline.

In a prior case, the supreme court concluded that an employer's requirement of employees was reasonable because the requirement had a proper purpose. *Schmidgall*, 644 N.W.2d at 805. In this case, the purpose of Fairview's requirement was to comply with state law and with the request of a state agency that licenses its facilities, which is a proper purpose. In another case, the supreme court concluded that an employer's requirement was reasonable because it "created no unreasonable burden" on employees and clearly stated the employer's expectations. *Vargas*, 673 N.W.2d at 207. In this case, Fairview's requirement imposed a very light burden—estimated to be ten minutes of time—and was clearly articulated in multiple e-mail messages, one of which attached written instructions that had been prepared by DHS. Fairview's requirement was clearly stated and did not

impose an unreasonable burden on Lentz. Thus, the ULJ did not err by determining that Fairview's requirement that she complete a background-study application was a reasonable requirement.

Because Fairview's requirement was reasonable, Lentz's refusal to complete the background-study application was "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). Thus, the ULJ did not err by concluding that Lentz engaged in employment misconduct and that she is ineligible for unemployment benefits.

Affirmed.