

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1393**

William Wilson,
Relator,

vs.

Northern Pines Mental Health Center Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 23, 2021
Affirmed
Smith, Tracy M., Judge**

Department of Employment and Economic Development
File No. 39194089-3

William L. Wilson, Garrison, Minnesota (pro se relator)

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

Northern Pines Mental Health Center Inc., Little Falls, Minnesota (respondent employer)

Considered and decided by Florey, Presiding Judge; Jesson, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Relator William Wilson challenges the decision of an unemployment-law judge
(ULJ) that he is ineligible for unemployment benefits because he was discharged for

employment misconduct. Wilson asserts that he did not commit employment misconduct and that he did not have a fair opportunity to defend his conduct. We affirm.

FACTS

Wilson worked full-time as a licensed clinical social worker at Northern Pines Mental Health Center from August 16, 2016, until his employment was terminated on April 10, 2020. He provided services to clients at Northern Pines and Teen Challenge. As part of his social-work practice, he received training on Health Insurance Portability and Accountability Act (HIPAA) requirements and knew that he could not divulge confidential information without complying with those requirements.

The termination of Wilson's employment arose out of an incident in March 2020. At that time, Wilson was on probation following a driving-while-intoxicated conviction. While on probation, he tested positive for alcohol in his system, and he had a probation-violation hearing scheduled for September 2020. During a phone call with his probation officer, Wilson complained that he knew of individuals in his social-work practice that were not "getting any repercussions for their felony charges" but he had "90 days hanging over [his] head" for his probation violation. He then told his probation officer that they had a mutual client who attended Teen Challenge and that the client used methamphetamine. He then asked his probation officer why he faced probation revocation while their mutual client did not.

Because the probation officer only had one client in common with Wilson who attended Teen Challenge, she knew the identity of the client whom Wilson was discussing. The probation officer reported Wilson's disclosure to Northern Pines through email, and

Northern Pines followed up with the probation officer by phone. Northern Pines thereafter discharged Wilson for violating HIPAA.

Wilson applied for unemployment benefits from respondent Minnesota Department of Employment and Economic Development (DEED). DEED determined that he was eligible for unemployment benefits because his actions were not employment misconduct, and Wilson began receiving unemployment benefits. Northern Pines appealed DEED's determination of eligibility, and a ULJ held an evidentiary hearing by phone.

At the beginning of the evidentiary hearing, Wilson notified the ULJ that he had not received any of the exhibits submitted by Northern Pines. The ULJ explained that he would go through each exhibit and describe them for the record and that, if Wilson had any questions, he should let him know. During the ULJ's description of the exhibits, Wilson had no questions.

Wilson and his supervisor both testified at the hearing. The ULJ then telephoned Wilson's probation officer, but she declined to testify, stating that her participation would create a conflict of interest for her. The ULJ then asked Wilson and Northern Pines whether they wanted the hearing continued so that the ULJ could issue a subpoena for the probation officer's testimony. Both Wilson and Northern Pines declined to have the hearing continued.

Following the hearing, the ULJ determined that Wilson was ineligible for unemployment benefits because his actions constituted employment misconduct. Wilson requested reconsideration, alleging that his due-process rights had been violated because he did not receive the exhibits and his probation officer refused to testify. The ULJ

affirmed, stating that Wilson could not claim reversible error when he had agreed to proceed without the exhibits and without the probation officer's testimony.

Wilson's certiorari appeal follows.

DECISION

I. The ULJ's determination that Wilson committed employment misconduct is not erroneous.

The Minnesota unemployment-insurance program provides a temporary partial wage replacement to workers who are "unemployed through no fault of their own." Minn. Stat. § 268.03, subd. 1 (2020). A person discharged for employment misconduct is not eligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4 (2020). "Employment misconduct means 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." *Id.*, subd. 6(a) (2020).

Whether an employee committed a particular act is a question of fact, and whether that act constitutes employment misconduct is a question of law. *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016). We construe a ULJ's factual findings in a light favorable to the ULJ's decision, and we will not disturb those findings if the evidence substantially supports them. *See id.*; *see also* Minn. Stat. § 268.105, subd. 7(d)(5) (2020).

Wilson challenges the ULJ's finding that he was speaking about a specific mutual client when he was talking to his probation officer. He contends, instead, that he was speaking generally about mutual clients. Although the evidence conflicted in some respects, the ULJ's finding that Wilson divulged HIPAA-protected information about a

specific client for personal reasons is supported by substantial evidence in the record. This evidence includes testimony from his supervisor that Wilson told his probation officer that they had a mutual client who was in treatment at Teen Challenge. The evidence also includes the probation officer's email to Northern Pines, in which she reported that Wilson told her that a mutual client used methamphetamine and that, based on Wilson's statements, she could identify the client. And, although Wilson testified that he was speaking generally about mutual clients, the ULJ determined that his testimony was not credible. On appeal, we defer to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). The record thus supports the ULJ's factual finding that Wilson disclosed personally identifiable information about his client in violation of HIPAA.

Wilson also challenges the ULJ's legal determination that his actions constitute employment misconduct. He contends that his actions cannot constitute employment misconduct because he was acting in good faith to carry out his obligations as a mandated reporter. *See* Minn. Stat. § 268.095, subd. 6(b)(6) (providing that employment misconduct does not include "good faith errors in judgment if judgment was required"). Wilson cites an exception under HIPAA that allows unconsented-to disclosures to prevent an "imminent threat to the health or safety of the patient." But Wilson did not claim to the ULJ that he was acting in good faith to disclose information pursuant to this HIPAA exception. Thus, the ULJ had no opportunity to evaluate the credibility of Wilson's claim. Because Wilson did not raise the issue to the ULJ, the issue is not properly before this court on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally

will not consider matters not argued to and considered by the district court); *Hentges v. Minn. Bd. of Water & Soil Res.*, 638 N.W.2d 441, 448 (Minn. App. 2002) (applying *Thiele* in an administrative appeal), *review denied* (Minn. Mar. 27, 2002). Based on the ULJ's factual findings, which are supported by the record, the ULJ did not err by concluding that Wilson committed employment misconduct by violating HIPAA for personal reasons.

II. The ULJ did not violate Wilson's due-process rights.

Wilson also argues that he “was not afforded a fair rebuttal in this case” and that “this is evident in the exhibits and testimony.” To the extent that Wilson is challenging the fairness of the evidentiary hearing in this case, we reject the argument. A ULJ “must ensure that all relevant facts are clearly and fully developed.” Minn. R. 3310.2921 (2019). Before the hearing, the ULJ explained that he would “go through each of those exhibits and describe them for the record.” The record reflects that, during the hearing, the ULJ did exactly that. Wilson did not ask the ULJ any questions about the exhibits, nor did he notify the ULJ about any confusion he may have had. After describing the exhibits, the ULJ asked Wilson whether he had any legal objections to the exhibits, and Wilson said that he did not. On this record, the ULJ met his duty to assist the parties in developing the facts, and Wilson has failed to show that the ULJ violated his due-process rights.

Affirmed.