STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0027

Edward Curtis, Jr.,
Relator,

vs.

ARG Resources LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed October 11, 2021
Affirmed
Johnson, Judge

Department of Employment and Economic Development
File No. 40527698-3

Edward A. Curtis, Benson, Minnesota (*pro se* relator)

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

ARG Resources, L.L.C., Willmar, Minnesota (respondent employer)

Considered and decided by Johnson, Presiding Judge; Bryan, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Edward Curtis Jr. was fired from his job because he yelled and swore at his manager. He applied for unemployment benefits. The department of employment and economic

development concluded that he is ineligible because he was discharged for employment misconduct. We affirm.

FACTS

For approximately eight months in late 2019 and early 2020, Curtis was employed as a cook at an Arby's restaurant in Willmar. The evidence described below is consistent with the facts that were found by the unemployment-law judge (ULJ).

On April 23, 2020, Curtis was scheduled to begin a work shift at 4:00 p.m. At approximately 4:30 p.m., Curtis called his manager, Craig Schwartz, and said that he would not be at work that day because he was having problems with his car. The restaurant had a policy that required employees to give notice to a manager at least three hours before a scheduled shift if the employee was going to be tardy or absent. Because Curtis called Schwartz after his shift had begun, Schwartz entered a written warning on Workday, an online application that the restaurant used to keep records and to communicate with its employees. Curtis received notices from the Workday application via his wife's cell phone. Shortly after Curtis gave untimely notice of his absence, he called Schwartz a second time, in response to the warning on Workday. During the second conversation, Curtis engaged in what Schwartz described as a "45-minute rant" during which Curtis called Schwartz a "f--king liar" and asked why Schwartz was "out to f--k [him] over."

On April 27, 2020, Curtis called Schwartz again and asked why Schwartz was not protecting his employees from COVID-19. Curtis again used profanity and again called Schwartz a liar. Curtis also asked Schwartz for the telephone number of the area manager, which Schwartz provided. After speaking with Curtis, Schwartz called the area manager

to apprise him of the situation. During that telephone call, the area manager authorized Schwartz to terminate Curtis's employment.

On April 28, 2020, Curtis was scheduled to begin a work shift at 3:00 p.m. Before that time, Curtis called Schwartz and again asked for the area manager's telephone number. Schwartz informed Curtis that his employment was being terminated and told him not to come to work for the 3:00 p.m. shift. Curtis nonetheless went to Arby's shortly before 3:00 p.m. When Curtis arrived, Schwartz gave him a piece of paper with the area manager's telephone number and asked him to leave. Curtis refused to leave and yelled and used profanity to an extent that was audible to customers. Schwartz called the police. When a police officer arrived, Curtis left Arby's "without further incident."

In May 2020, Curtis applied for unemployment benefits. Based on the information that Curtis had provided in his application, the department of employment and economic development made an initial determination that Curtis is eligible for unemployment benefits. The restaurant filed an administrative appeal and argued that Curtis should be ineligible because he engaged in employment misconduct.

A ULJ conducted a hearing by telephone in September 2020. Schwartz testified on behalf of the restaurant; Curtis testified on his own behalf. After the hearing, the ULJ issued a written decision in which he determined that Curtis is ineligible for unemployment benefits because he engaged in employment misconduct. Curtis requested reconsideration, but the ULJ denied the request and affirmed the prior ruling. Curtis appeals by way of a petition for a writ of certiorari.

DECISION

Curtis argues that the ULJ erred by determining that he is ineligible for unemployment benefits on the ground that he 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). Thus, 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) (2020). Generally, "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).

Curtis makes three arguments in his appellate brief, which we address in turn.

I. Findings of Fact

Curtis first argues that the ULJ made findings of fact that are inconsistent with certain parts of the evidentiary record. Specifically, he argues that the ULJ's findings are inconsistent with three documents that he submitted to the ULJ.

The first document is an e-mail message that the area supervisor sent to Curtis on April 28, 2020, in response to Curtis's e-mail requesting a telephone conversation. The area supervisor's message is very short; it states, in full: "I am on a call right now, you can

call me at 3:00 PM." Curtis does not explain how the e-mail is inconsistent with any of the ULJ's findings of fact. We conclude that it is not inconsistent with the ULJ's decision.

The second document is a police report, which also is very short. It describes the situation as follows: "disgruntled employee, refusing to leave." It summarizes the resolution of the incident as follows: "Curtis understood he was fired and no longer welcome in the store; left without further incident." Curtis again does not explain how the police report is inconsistent with any of the ULJ's findings of fact. We conclude that it is not inconsistent with the ULJ's decision.

The third document is a three-page handwritten statement by Curtis's wife in which she states that she was present for all of Curtis's telephone conversations and describes them in detail. The statement is very similar to the testimony Curtis gave at the evidentiary hearing. The ULJ found Curtis's testimony to be not credible and relied instead on the testimony of Schwartz, whom the ULJ found to be more credible.

We note that all three of these documents were not introduced into evidence during the evidentiary hearing but, rather, were submitted to the ULJ with Curtis's request for reconsideration. However, the exchange of e-mail messages between Curtis and the area supervisor was read into the record by Curtis during his testimony. "In deciding a request for reconsideration, the unemployment law judge must not consider any evidence that was not submitted at the hearing, except for purposes of determining whether to order an additional hearing." Minn. Stat. § 268.105, subd. 2(c) (2020). A ULJ "must order an additional hearing if a party shows that evidence which was not submitted at the hearing" either, first, "would likely change the outcome of the decision" and the party had good

cause for not submitting it earlier or, second, "would show that the [other] evidence that was submitted at the hearing was likely false" and that the false evidence affected the decision. Minn. Stat. § 268.105, subd. 2(c)(1)-(2). This court applies an abuse-of-discretion standard of review to a ULJ's decision not to hold an additional hearing. *Kelly v. Ambassador Press, Inc.*, 792 N.W.2d 103, 104 (Minn. App. 2010).

In denying Curtis's request for reconsideration, the ULJ stated that "Curtis presents no new information or evidence that would likely change the outcome of the decision." That determination is not erroneous. The first and second documents do not contradict the ULJ's decision in any way. Furthermore, the first and second documents were not relevant to whether Curtis was terminated for employment misconduct because he was terminated by telephone on April 28, 2020, *before* he arrived at the restaurant. Minn. Stat. § 268.095, subd. 7 (providing that "applicant may not be held ineligible for unemployment benefits . . . for any acts . . . occurring after the applicant's separation from employment"). The third document is inconsistent with the ULJ's decision, but the statement does not contain new information because Curtis previously had denied yelling and swearing at Schwartz. Accordingly, an additional evidentiary hearing was unnecessary. Thus, the ULJ did not err in his findings of fact.

II. Fair Hearing

Curtis also argues that the ULJ erred by not providing him with a fair hearing. Specifically, Curtis suggests that the ULJ cut him off when he was speaking, did not listen to his testimony, and treated Schwartz in a more favorable manner.

A ULJ "must assist all parties in the presentation of evidence." Minn. R. 3310.2921 (2019). The ULJ also "must exercise control over the hearing procedure in a manner that protects the parties' rights to a fair hearing." *Id.* Each party may examine witnesses, cross-examine the other party's witnesses, and offer and object to exhibits. *Id.* This court will reverse a ULJ's decision for failure to conduct a fair hearing only if the ULJ employed an unlawful procedure or conducted the hearing in an arbitrary and capricious manner. Minn. Stat. § 268.105, subd. 7(d)(3), (6) (2020); *see also Wichmann v. Travalia & U.S. Directives, Inc.,* 729 N.W.2d 23, 27 (Minn. App. 2007).

The department argues that the ULJ did not fail to provide a fair hearing. The department asserts that the ULJ interrupted both Curtis and Schwartz "in order to clarify testimony and prevent repetitive testimony." The department also asserts that Curtis had an opportunity to present testimony and to cross-examine Schwartz. The department further asserts that Curtis has not identified any evidence or information that he was prevented from providing to the ULJ.

We generally agree with the department. The ULJ occasionally interrupted both Curtis and Schwartz. The ULJ allowed Curtis to read some of his documentary evidence into the record and asked Curtis whether he wished to call any witnesses other than himself. The ULJ treated Schwartz in a similar manner. The ULJ asked both Curtis and Schwartz whether they had cross-examination questions for the other. In short, after reviewing the transcript of the evidentiary hearing, we perceive no conduct by the ULJ that is contrary to the applicable rules. Thus, the ULJ did not err by not conducting a fair hearing.

III. Credibility

Curtis last argues that the ULJ erred by relying on the testimony provided by Schwartz, which Curtis describes as "dishonest and deceptive."

"When the credibility of a witness testifying in a hearing 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) (2020). This court will defer to a ULJ's credibility determinations if they are supported by substantial evidence. *See Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 531-33 (Minn. App. 2007).

In his first decision, the ULJ stated that Schwartz's testimony was credible because it was more straightforward than Curtis's testimony, because it was corroborated by a statement of another restaurant employee who was present on April 28, 2020, and because it was supported by the "contemporaneous notes" that Schwartz had taken and recorded in Workday. In contrast, the ULJ noted inconsistencies in Curtis's testimony, which made it less reliable. The ULJ's credibility determinations are adequately explained and are supported by substantial evidence in the record of the evidentiary hearing. Thus, the ULJ did not err by relying on the testimony of Schwartz, whom the ULJ found to be credible.

In sum, the ULJ did not err by concluding that Curtis is ineligible for unemployment benefits on the ground that he was discharged for employment misconduct.

Affirmed.