STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0227

Dennis Field,
Relator,

vs.

Casey's Services Co.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed December 20, 2021
Affirmed
Bjorkman, Judge

Department of Employment and Economic Development
File No. 39739355-3

Ashley R. Thronson, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for relator)

Casey's Services Co., Ankeny, Iowa (respondent employer)

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

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

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Relator challenges the denial of his request for unemployment benefits, arguing that (1) the factual findings of the unemployment-law judge (ULJ) are unsupported by substantial evidence, (2) relator's actions do not constitute employment misconduct, and (3) the ULJ committed evidentiary and procedural errors. We affirm.

FACTS

Relator Dennis Field worked as a truck driver for respondent Casey's Services Co. from January 7, 2013 to April 23, 2020. His responsibilities included obtaining gas from terminals and delivering the gas to Casey's convenience stores. Casey's discharged Field for two incidents of insubordination related to policy changes Casey's made in early 2020.

In February, Casey's changed the time at which the terminals opened to 4:30 a.m., instructing drivers not to request loads of gasoline before that time.[1] Despite the policy change and instruction, Field requested loads before 4:30 a.m. several times. On April 13, Field's supervisor directed him via text to stop requesting loads before 4:30 a.m. Field responded by text asking, "what the hell is the difference" and "why can't we ask for a load" before 4:30 a.m. Field's supervisor considered this reply insubordinate and suspended Field for one day.

Later in the spring of 2020, Casey's modified its attendance-reporting policy in response to the lack of work for drivers brought on by the COVID-19 pandemic. Under

[1] Prior to February, Field and other drivers routinely requested loads before their shifts began so they would not have to wait when they arrived at the terminals.

the modified attendance-reporting policy, Casey's evaluated the workload before each shift and supervisors would then call drivers and tell them to stay home if there was not enough work. Those drivers received a lump sum minimum payment for the day. Drivers who contacted dispatch and volunteered to stay home rather than waiting for a call from their supervisor did not receive the minimum payment. Instead, they were required to use (and enter) sick or vacation time or get preapproval to take an unpaid absence. Field volunteered to stay home on April 6, 7, 8, and 9. He did not enter time for those days and did not have preapproval for an unpaid absence. Both Field's supervisor and an administrative assistant told Field he needed to enter sick or vacation time for those days. Field did not enter time for any of the four days. Casey's considered Field's failure to do so insubordinate and terminated Field's employment.

Field filed for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) determined he was ineligible for benefits because he was discharged for employment misconduct. Field appealed, and a ULJ affirmed the determination of ineligibility. The ULJ found that Field requested gasoline loads before his start time in violation of Casey's load-request policy and was insubordinate in responding to his supervisor's direction that he stop doing so. And the ULJ found that Field violated Casey's attendance-reporting policy and was insubordinate in not following express directions to enter sick or vacation time for the days he volunteered to take off. The ULJ expressly credited the testimony of Field's supervisor and Casey's transportation manager over Field's testimony. And the ULJ concluded that Field's

conduct—for which Casey's discharged him—constituted employment misconduct. Field requested reconsideration, and the ULJ affirmed the decision.

Field appeals by writ of certiorari.

DECISION

An employee who is discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2020). Whether an employee committed employment misconduct is a mixed question of law and fact. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). On review of a ULJ decision, we defer to the ULJ's credibility determinations and uphold the ULJ's findings of fact if supported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d)(5) (2020); *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016). But we review de novo whether the facts found by the ULJ constitute employment misconduct. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Gonzalez Diaz v. Three Rivers Cmty. Action, Inc.*, 917 N.W.2d 813, 816 n.4 (Minn. App. 2018) (emphasis omitted) (quotation omitted). We do not reweigh conflicting evidence; we look to the record only to determine whether the evidence reasonably supports the ULJ's factual finding. *See Wilson*, 888 N.W.2d at 460. And we will not reverse a ULJ's decision when the claimed error did not prejudice the relator's substantial rights. Minn. Stat. § 268.105, subd. 7(d). A ULJ's decision does not prejudice a relator's substantial rights where the error is harmless. *Ywswf v. Teleplan*

Wireless Servs., Inc., 726 N.W.2d 525, 530 (Minn. App. 2007) (rejecting the relator's argument of an unfair hearing in the absence of prejudice).

I. Substantial evidence supports the ULJ's factual findings and credibility determinations.

Field argues that several of the ULJ's factual findings are unsupported by substantial evidence and contests the ULJ's determination that his supervisor and Casey's transportation manager are more credible than him. We consider these arguments in turn.

A. Substantial evidence supports the ULJ's findings that Field did not follow company policy and was insubordinate.

Field asserts that substantial evidence does not support the ULJ's finding that he was discharged in part because of his prior suspension for failing to follow the load-request policy. We disagree. Both Field's supervisor and Casey's transportation manager testified that Field requested gasoline loads before his start time on several occasions after being repeatedly told not to do so. Field acknowledged that he was aware of the new load-request policy before he received and responded to his supervisor's April 13 text. And Field's supervisor testified that he considered Field's text message regarding the load-request policy in deciding to terminate Field's employment.

Field next challenges the ULJ's finding that his conduct constitutes a pattern of insubordination. This argument is unavailing. As noted above, Field was aware that he was not permitted to request gasoline loads before the beginning of his shift. Yet, he continued to do just that and, when confronted by his supervisor, responded by using profanity and questioning company policy. The record also shows that Field was aware that he needed to enter vacation or sick time for the four days he volunteered to stay home

from work. Even if, as Field contends, the modified attendance-reporting policy was unclear, Field was specifically told to enter the time for those days. His supervisor and the transportation manager testified—and Field himself acknowledged—that his supervisor and an administrative assistant both informed Field that he needed to enter sick or vacation time for those days. It is undisputed that Field did not follow these directions. In short, the record supports the ULJ's finding that Field was insubordinate on multiple occasions.

Finally, we agree with the parties that two of the ULJ's findings lack the requisite evidentiary support. The evidence does not support the findings that drivers who volunteered to take a day off received both a minimum payment and vacation pay, and that Field's act of calling dispatch to volunteer to take the days off was, itself, insubordinate. But we discern no prejudice to Field's substantial rights. The first unsupported finding is irrelevant; there is no dispute as to pay in this case. The second unsupported finding is harmless; the ULJ made several other findings of Field's insubordination, primarily based on Field's failure to enter time after being instructed to do so by both his administrative assistant and his supervisor. Because the two unsupported findings of fact do not prejudice Field's substantial rights, they provide no basis for reversal.

B. The ULJ's credibility determinations are adequate and supported by substantial evidence.

A ULJ's credibility determinations must "set out the reason for crediting or discrediting" testimony. Minn. Stat. § 268.105, subd. 1a(a) (2020). This statutory requirement is met when the ULJ "ma[kes] a basic finding that she did not find specific testimony by the relator credible." *Wichmann v. Travalia & U.S. Directives, Inc.*, 729

N.W.2d 23, 29 (Minn. App. 2007) (discussing *Ywswf*, 726 N.W.2d at 532-33). This requirement is not met when "credibility was central to the decision" and the ULJ "ma[kes] no similar findings" and "never address[es] credibility." *Id.*

Field contends that the ULJ's credibility findings are too "generic" to meet the section 268.105 requirement. We are not persuaded. The ULJ found that "[t]o the extent their testimony is in disagreement, [Field's supervisor's] and [the transportation manager's] testimony is more credible than Field's testimony, because it is a more convincing, logical, and likely explanation of events, and they corroborate each other." The ULJ further explained that "[t]he series of close events show a pattern of insubordination and not following policy, making it more likely that it was insubordinate and a knowing violation of policy versus Field's assertion that he misunderstood." This explanation is like the "basic finding" we found sufficient in *Ywswf*. *See* 726 N.W.2d at 532-33. And it is not at all like the instances where we have reversed a ULJ's credibility findings for lack of any explanation. *See, e.g.*, *Wichmann*, 729 N.W.2d at 28 ("The ULJ did not make any express findings on the witnesses' credibility.").

The ULJ's credibility determinations are also supported by substantial evidence. The record includes evidence that Field and other drivers did not understand how the modified attendance-reporting policy interacted with Casey's general attendance policy. But the record also contains evidence that the modified attendance-reporting policy clearly set out the timekeeping requirements. Field's supervisor and Casey's transportation manager both testified consistent with Casey's load-requesting policy and modified attendance-reporting policy. And Field agreed that he was aware of both policies. This

evidence reasonably supports the ULJ's determination that Field's supervisor and the transportation manager were more credible than Field.

II. Field's actions constitute employment misconduct.

Employment misconduct is "any 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) (2020). But "simple unsatisfactory conduct" and "good faith errors in judgment if judgment was required" are not employment misconduct. *Id.*, subd. 6(b) (2020).

Field argues that neither his text to his supervisor nor his failure to enter time for the days off constitute a serious violation of his employer's standards.[2] Whether an employee committed a serious violation "is an objective determination: was the employer's expectation for the employee reasonable under the circumstances?" *Jenkins v. Am. Express*

[2] Field also asserts that he was not insubordinate because he misunderstood the applicable policies, and he repeats his argument that he was discharged for a single, isolated incident of failing to enter vacation time for his time off. These arguments essentially challenge the ULJ's factual findings and are, therefore, not subject to de novo review. *See Stagg*, 796 N.W.2d at 315. Even assuming these arguments do challenge the ULJ's legal conclusions, they still fail. First, Field relies on caselaw that predates the current statute and reflects a knowledge-based test under which a misunderstanding cannot amount to employment misconduct. *See Burgeson v. W. Publ'g Corp.*, No. A10-0975, 2011 WL 1546991, at *3 (Minn. App. Apr. 26, 2011) (citing *Tuckerman Optical Corp. v. Thoeny*, 407 N.W.2d 491, 493 (Minn. App. 1987)). Negligent or indifferent conduct may constitute employment misconduct under the current statute. Minn. Stat. § 268.095, subd. 6(a). Second, there is no single-incident exception to the definition of employment misconduct. *See id.*, subd. 6(d) (2020). And an employee's failure to correct a violation after they had the opportunity to correct the violation is not a single incident. *See Wilson*, 888 N.W.2d at 462-63 (concluding an employee's failure to correct a misrepresentation to her employer after having the opportunity to do so was not a "single incident" under the old language of the employee-misconduct statute).

Fin. Corp., 721 N.W.2d 286, 290 (Minn. 2006). The circumstances of the case are key to making this determination. *Wilson*, 888 N.W.2d at 462.

Employers have the right to establish and enforce reasonable rules governing employee attendance. *See Wichmann*, 729 N.W.2d at 28. An employee who fails to follow an employer's reasonable attendance policy commits employment misconduct. *Stagg*, 796 N.W.2d at 317. Employees who are discharged for refusing to comply with a reasonable request from their employer are discharged for employment misconduct. *E.g.*, *Schmidgall*, 644 N.W.2d at 807 (holding employee committed misconduct by failing to follow a same-shift reporting policy for workplace injuries after employer asked them to do so). And employers may reasonably expect that employees will not be disrespectful or insubordinate when interacting with their supervisors. *See, e.g.*, *Montgomery v. F & M Marquette Nat'l Bank*, 384 N.W.2d 602, 603, 605 (Minn. App. 1986) (reasoning that employee was insubordinate by saying to supervisor, "You don't know what the hell you're talking about"), *rev. denied* (Minn. June 13, 1986); *Tester v. Jefferson Lines*, 358 N.W.2d 143, 145 (Minn. App. 1984) (stating that "employer had a right to expect Tester to refrain from uttering unprovoked obscenities at management personnel"), *rev. denied* (Minn. Mar. 13, 1985).

Here, the ULJ found that Field did not enter time for his days off as required by the attendance-reporting policy, despite direction from his supervisor and an administrative assistant; requested gasoline loads before his start time on six occasions, knowing that it violated the load-request policy; and used profanity when responding to his supervisor's direction to stop doing so. We have no difficulty concluding that the two policies at issue

and Casey's requests were reasonable. Indeed, neither party urges us to conclude that failure to comply with the policies and disrespecting a supervisor are anything other than employment misconduct.

Field nevertheless asserts his actions do not constitute employment misconduct because Casey's has a history of not enforcing the load-request policy and other drivers regularly disregarded the policy. This argument is unavailing. "Whether or not other employees violated those same rules and were disciplined or discharged is not relevant" to the employment-misconduct analysis. *Sivertson v. Sims Sec.*, 390 N.W.2d 868, 871 (Minn. App. 1986), *rev. denied* (Minn. Aug. 20, 1986); *see also Stagg*, 796 N.W.2d at 316 ("[A]n employee's expectation that the employer will follow its disciplinary procedures has no bearing on whether the employee's conduct violated the standards the employer has a reasonable right to expect or whether any such violation is serious.").

Nor are we persuaded by Field's argument that his actions were "simply unsatisfactory conduct" or a "good faith error[] in judgment" that does not amount to unemployment misconduct under Minn. Stat. § 268.095, subd. 6(b). We have already determined that the record supports the ULJ's credibility determination that Field committed a knowing violation of policy. And we are not convinced that the circumstances show Field "attempted to be a good employee but just wasn't up to the job and was unable to perform her duties to the satisfaction of the employer." *Bray v. Dogs & Cats Ltd. (1997)*, 679 N.W.2d 182, 185 (Minn. App. 2004). To the contrary, the record reflects and the ULJ found that Field disregarded repeated directions and used profanity when his supervisor

confronted him, and that he was discharged for insubordination, not because he "just wasn't up to the job." *See id.* Field's actions constitute employment misconduct.

III. Field is not entitled to relief based on evidentiary or procedural error.

Field argues that the ULJ abused her discretion by declining to admit two pieces of evidence, and by allowing testimony that varied from the reasons for denying benefits stated in DEED's determination of ineligibility and the notice of hearing. We address each argument in turn.

A ULJ must assist parties in the presentation of evidence and must ensure that all relevant facts are clearly and fully developed. Minn. R. 3310.2921 (2019). A ULJ "may exclude any evidence that is irrelevant, immaterial, unreliable, or unduly repetitious." *Id.*

Field contends that the ULJ improperly refused to admit the documents he offered as Exhibit 4. We disagree for three reasons. First, as the ULJ noted, the documents comprising Exhibit 4 are illegible, so it is impossible to discern their relevance or other admissibility concerns. Second, the ULJ informed the parties that they had the right to ask for the hearing to be continued to permit them to present additional documents and witnesses. Field declined the offer. Third, Field identifies no prejudice caused by excluding Exhibit 4. He points to no information contained in Exhibit 4 that was not presented through witness testimony or other evidence submitted during the hearing. Indeed, the ULJ elicited extensive testimony on the topics that Field asserts the documents relate to, the modified attendance-reporting policy and Field's suspension. Field did not object to any exhibit or testimony.

Field next argues that the ULJ erred by refusing to allow him to read into the record an email Casey's sent to employees about the attendance-reporting policy. We see no error. Because Field does not point to information in the email that would have impacted the ULJ's decision, he has not demonstrated prejudice. He did read part of an email from Casey's into the record, which states the "[t]he enhancement will be provided, a minimum shift-pay 200 for the current pay period through April 16." It is unclear, but quite possible, that the email Field read is the same email he references in this argument.

Finally, Field asserts that he was deprived of due process because the hearing notice focused only on his failure to enter sick or vacation time for the four days he volunteered not to work, not insubordination or his previous suspension. When assessing a due-process challenge to the adequacy of notice, we consider "whether the notice was reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Godbout v. Dep't of Emp. & Econ. Dev.*, 827 N.W.2d 799, 802 (Minn. App. 2013) (quotation omitted).

The circumstances convince us that the notice Field received was adequate. It is true that the notice of hearing lists DEED's initial determination as "Discharged – Absent or late to work determination." But other information Field provided to and received from DEED demonstrates Field was apprised of the action, including the issues presented, and he was afforded the opportunity to respond. In his initial request for benefits, Field stated: "I was told that I was being terminated because I did not fill out a form to be paid for my time off." In response to a question asking when and how Field violated an employment policy, he indicated: "I took four days off at the beginning of April. I did not go into the

[timekeeping] system and label them as no pay days." And when later asked for additional information, Field stated: "I was told I was being discharged for insubordination." The determination of ineligibility states Field was discharged "for a failure to follow an employer policy" and that Field "did not follow the employer's absence reporting policy." When read in context, the hearing notice adequately apprised Field of the pendency of the action and afforded him an opportunity to present his objections. Field understood that his discharge was related to what Casey's considered insubordinate conduct, a contention he was prepared to and did dispute during the hearing.

In sum, the ULJ's pertinent findings of fact are not clearly erroneous, the actions for which Field was discharged constitute employment misconduct, and Field is not entitled to relief based on evidentiary or procedural error.

Affirmed.