STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0236

Austin Truskowski,
Relator,

vs.

ABM Industry Groups, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed September 13, 2021
Affirmed
Ross, Judge

Department of Employment and Economic Development
File No. 39076630-3

Austin Truskowski, Eagan, Minnesota (pro se relator)

ABM Industry Groups, LLC, Westminster, Colorado (respondent employer)

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

Considered and decided by Reilly, Presiding Judge; Ross, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

A parking-management company discharged marketing coordinator Austin Truskowski for clocking out of work after he walked home rather than before leaving the workplace. The Minnesota Department of Employment and Economic Development

initially granted Truskowski's application for unemployment benefits, but an unemployment-law judge determined that he was disqualified because he was discharged for employment misconduct. We affirm the disqualification decision because the evidence supports the unemployment-law judge's factual findings and because Truskowski's conduct constitutes employment misconduct.

FACTS

Austin Truskowski worked as a marketing coordinator for ABM Industry Groups LLC from March 2019 to April 2020. Truskowski's work hours were 8:00 a.m. to 5:00 p.m., and ABM accounted for his work time by requiring him to clock in and out at the beginning and end of his workday.

An ABM manager noticed that Truskowski would clock in and out from home rather than from his workstation—a process that would result in ABM paying Truskowski for nonworking time during his commute. The manager met with Truskowski on March 9, 2020, and ordered him to clock in and out using only the desktop computer at his workplace.

Two days later, Truskowski again clocked out from home rather than using his workplace computer. His colleague had asked him to send a document to a client. The document was on Truskowski's home computer. Truskowski left the office an hour before the end of his workday and walked home. He then accessed the document, sent it to the client, and clocked out from his home computer at the scheduled time at the end of the workday. ABM discharged Truskowski.

Truskowski applied for unemployment benefits, which the department of employment and economic development initially granted. ABM appealed the decision, and an unemployment-law judge (ULJ) concluded that Truskowski had engaged in employment misconduct. The ULJ then affirmed that decision over Truskowski's request for reconsideration.

Truskowski appeals by certiorari.

DECISION

Truskowski challenges his ineligibility determination on the ground that he did not engage in employment misconduct. A person discharged for employment misconduct is not eligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4 (2020). 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." *Id.*, subd. 6(a) (2020). Whether an employee engaged in misconduct presents a mixed question of fact and law, and we therefore review for clear error the ULJ's factual findings and we review de novo whether the conduct constitutes employment misconduct. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011).

We reject Truskowski's contention that ABM could not reasonably expect him to clock out from his workstation rather than from home. The contention rests on his assertion that ABM expected him to complete work remotely, afterhours. The assertion in turn rests on his characterization of a text-message exhibit that he argues the ULJ erroneously refused to admit into evidence. We need not address his argument because the exhibit fails to support his assertion.

Contrary to Truskowski's argument, the exhibit does not show that his boss expected him to work outside of his work hours and therefore also expected him to clock out from home. The exhibit includes ten text-message conversations between him and his boss, eight of which occurred outside Truskowski's work hours. The ULJ indeed considered the text conversations in her amended findings, concluding that they failed to support Truskowski's assertion that he was expected to work outside his normal hours and therefore implicitly authorized to clock out from home. Although Truskowski accurately contests the ULJ's finding that the text messages were all written before March 9, this factual error does not lead us to reverse because the after-hours text messages do not show that Truskowski's supervisor was authorizing him to clock out from home.

We also reject Truskowski's contention that clocking out from home does not represent a serious violation. Claiming time not spent working as payable time is a form of theft for employees required to work a specified period, and we have held that claiming as paid time even ten minutes of nonworking time constitutes a serious violation of an employer's reasonable expectations. *See Ruzynski v. Cub Foods, Inc.*, 378 N.W.2d 660, 662 (Minn. App. 1985). Requiring employees to clock in and out only from their workstations rather than from home prevents employees from claiming the time spent commuting to and from the workplace as payable time. By clocking out at home an hour after he left work rather than clocking out at work meant that Truskowski registered his walk home as payable time. This seriously violated ABM's reasonable expectations.

We are not persuaded otherwise by Truskowski's remaining arguments. He contends that an average reasonable employee would have clocked out from home on

March 9 to complete the outstanding work project of sending the document to the client. But he points to nothing in the record suggesting that his supervisor expected him to complete the assigned project on March 9, or that he could not have remained at his workplace until the end of his workday, walked home on his own time, and then sent the document from his home computer to his workplace computer to allow himself to complete the project during the next work period. Truskowski testified that he had previously sent his work computer documents from his personal computer and offered no reason why he could not have done so here. Truskowski also contends that a single incident is insufficient to establish employment misconduct. But there is no single-incident exception to employment misconduct. *See, e.g.*, *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 463 (Minn. 2016). The legislature amended section 268.095 in 2009, from including an exception for "a single incident that does not have a significant adverse impact on the employer," to requiring mere consideration of a single incident as an "important fact." 2009 Minn. Laws ch. 15, § 9, at 8 (amending Minn. Stat. § 268.095, subd. 6(d) (2009). Truskowski's single act constitutes employment misconduct.

Affirmed.