

*This opinion is nonprecedential except as provided by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
A21-0608**

Antonio Johnson,
Relator,

vs.

Fitness International LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed March 14, 2022
Affirmed
Slieter, Judge**

Department of Employment and Economic Development
File No. 40565152-3

Antonio D. Johnson, Hopkins, Minnesota (*pro se* relator)

Fitness International, LLC, Richfield, Minnesota (respondent employer)

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

Considered and decided by Slieter, Presiding Judge; Reilly, Judge; and Rodenberg,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Relator challenges an unemployment-law judge's (ULJ) determination that he is ineligible for unemployment benefits because he was terminated for employment misconduct. Because the record supports the ULJ's determination that relator was discharged for failing to notify his employer about his absences, which constitutes employment misconduct as defined by Minnesota law, we affirm.

FACTS

Relator Antonio Johnson began working as a full-time sales director for respondent-employer Fitness International, LLC on February 17, 2020, and was discharged on February 26, 2020. Johnson was scheduled to work shifts on February 24, 25, and 26. However, he missed these shifts because he was arrested on February 23 and remained in custody through February 26. Johnson did not contact, or ask anyone on his behalf to contact, his employer about his absences. As a result, he was discharged by Fitness International for "job abandonment" for missing three scheduled shifts without providing notice for his absences.

Johnson applied for unemployment benefits through respondent Minnesota Department of Employment and Economic Development (DEED), and in his application, he stated that he "quit" because he "was dealing with the sudden death of [his] mother," and because of "a legal situation that kept [him] from work." DEED determined that Johnson was ineligible for benefits because he "did not request accommodations for [the]

serious illness of a family member prior to quitting.” Johnson appealed this determination of ineligibility and the matter proceeded to a hearing before a ULJ.

During the hearing, the ULJ reviewed Johnson’s appeal statement. In that statement, Johnson explained that he was discharged from his employment “due to an illegal pick up by the [M]inneapolis Police” and “a 36 hour hold” that did not lead to any charges but did cause him to miss three scheduled shifts. The ULJ asked Johnson whether he knew why he was arrested, and he first replied “no, I do not.” After further questioning by the ULJ, Johnson revealed the alleged offense.

The ULJ asked Johnson about his mother’s death which he described in his initial unemployment-benefits application. Johnson responded:

That didn’t have anything to do with my firing or the situation to be honest. I put that initially because I was being prideful, and I didn’t want to say I got fire[d] to be honest. I just put, I put that I quit, and I put that was the reason. And again, that was because I was being prideful, but that had nothing to do with me not attending to my job. No, it had nothing to do with me not being there.

When asked why he said he quit in his application, Johnson responded, “again, because I was being prideful” which was “a dumb, dumb, dumb mistake of mine, filled out the paperwork wrong based upon my pridefulness.”

The ULJ asked Johnson whether he had “contact with anybody in [his] circle while [he was] in jail,” and he responded:

A: Um, honestly, yeah. I called, I did talk to one person, one person literally, but I, I did not, I thought I was going to be out the next day. I did not, I did not expect to be sitting in my boxers and go to jail right at that moment. So, yeah, I did talk to one person because I have to let somebody know I was alive,

but I literally thought I was going to be out the next day. I didn't know that it was going to end up like that. But yeah, I did talk to one person, yes.

Q: Okay. And it never, you never brought up maybe, um, they could reach out on your behalf.

A: Um, I was, I was too prideful. I thought I was gonna get out, you know.

Q: Okay. Okay.

A: I didn't want my employer to know I was in jail.

Both Johnson and a fitness director, who appeared on behalf of Fitness International, testified that it was Johnson's responsibility to report a missed shift to Fitness International. The fitness director testified that this was part of Johnson's training.

After the hearing, the ULJ determined that Johnson was ineligible for unemployment benefits because his absences without notice to his employer amounted to employment misconduct. Johnson filed a request for reconsideration arguing that he was terminated for "job abandonment," not employment misconduct, and challenging the ULJ's unfavorable credibility determination.

The ULJ, in the order affirming the decision, concluded that "[t]he credibility determination is supported by the evidence," and as for Johnson's job-abandonment claim, "[t]he employer does not label these actions as employment misconduct under its own definition, but the conduct is still employment misconduct under Minnesota Unemployment Insurance Law." Johnson appeals.

DECISION

We may reverse or modify a ULJ's decision determining eligibility for unemployment benefits "if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are . . . (5) unsupported by substantial evidence in view of the hearing record as submitted; or (6) arbitrary or capricious." Minn. Stat. § 268.105, subd. 7(d) (2020).

An unemployment-benefits applicant is ineligible for benefits if "the applicant was discharged because of employment misconduct." Minn. Stat. § 268.095, subd. 4(1) (2020). "Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law." *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted). We review whether a particular act constitutes disqualifying misconduct *de novo*. *Id.* And we review whether the applicant engaged in the conduct "in the light most favorable to the decision" and will "not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them." *Id.* (quotation omitted).

"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." Minn. Stat. § 268.095, subd. 6(a) (2020). "As a general rule, 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). An employer generally "has a right to expect an employee to work when scheduled." *Del Dee Foods, Inc. v. Miller*, 390 N.W.2d 415, 417 (Minn. App. 1986)

(quotation omitted). “An employer can reasonably expect an employee to keep it apprised of his whereabouts.” *Id.* (quotation omitted).

The ULJ concluded that Johnson was discharged for employment misconduct after finding that “Johnson was absent from three work shifts without notice”; he “had the ability to notify his employer, with the assistance of the person he was in contact with while incarcerated, and intentionally failed to do so because of pride”; and “Fitness International has a reasonable expectation for employees to provide notice regarding missed shifts through any means possible.” The ULJ’s findings and conclusion are supported by the record.

Johnson was arrested and held in custody for three days during which he was scheduled to work. Johnson did not contact Fitness International until after his release. The fitness director testified that Johnson was trained to contact Fitness International about missing a shift. Fitness International did not hear from Johnson or anyone on his behalf and, as a result, he was discharged for “job abandonment.” Johnson spoke to someone while he was in custody, but he chose not to contact Fitness International about his absences due to his pride and because he did not want his employer to know about his arrest.

Johnson contends that, due to his arrest, he could not contact Fitness International about his absences, and therefore, the ULJ erred by concluding this was employment misconduct. But the ULJ did not find Johnson’s contention credible. “Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Bangtson v. Allina Med. Grp.*, 766 N.W.2d 328, 332 (Minn. App. 2009) (quotation omitted). Nevertheless, if the credibility of a witness “has a significant effect on the

outcome of a decision, the [ULJ] must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1a(a) (2020).

The ULJ found that “Johnson demonstrated some credibility issues” based on his providing “false information” in his unemployment-benefits application and being “evasive” about “the details of his arrest” which “[a]ffect[ed] his overall credibility.” Ultimately, the ULJ found that “Johnson had an opportunity to have someone contact his employer but he intentionally did not do so because of his pride. Johnson cited his pride similarly when he described providing false information when he applied to benefits.” Because the ULJ set out the reasons for discrediting Johnson, which the record supports, we will not disturb the credibility determination. *Bangtson*, 766 N.W.2d at 332.

Johnson also argues that the ULJ erred because he was discharged for “job abandonment,” not employment misconduct, based on Fitness International’s own definitions. Johnson’s argument is unpersuasive. The statute’s definition of “employment misconduct” is “exclusive and no other definition applies.” Minn. Stat. § 268.095, subd. 6(e) (2020); *see also Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 458 (Minn. 2016) (concluding that the statutory definition is exclusive). As already discussed, Johnson’s conduct constitutes employment misconduct and his employer’s definition of employment misconduct has no authority in this proceeding.¹

¹ Johnson also asks us to “acknowledge” that the ULJ “coerc[ed]” him and demonstrated “bias” against him when asking for details about his arrest. 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 ULJ’s questions were proper in

In sum, the ULJ did not err in concluding that Johnson’s behavior amounted to employment misconduct when he did not notify his employer about his absences.

Affirmed.

developing a full record. *See* Minn. Stat. § 268.105, subd. 1a (2020) (requiring ULJ to issue “written findings of fact, reasons for decision, and decision,” which requires a developed record).