

*This opinion is nonprecedential except as provided by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
A21-0624**

Anthony Richmond,
Relator,

vs.

Vanden Hoak Cleaning,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed February 28, 2022
Affirmed
Worke, Judge**

Department of Employment and Economic Development
File No. 43180317-3

Anthony Richmond, Minneapolis, Minnesota (pro se relator)

VandenHoak Cleaning, Minnetonka, Minnesota (respondent-employer)

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

Considered and decided by Worke, Presiding Judge; Ross, Judge; and Larkin,
Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that relator was ineligible for unemployment benefits because he was discharged for employment misconduct. We affirm.

FACTS

Relator Anthony Richmond worked as a commercial cleaner for respondent VandenHoek Cleaning.¹ Richmond's assignment was at Creganna Medical, a manufacturer of medical products, mainly catheters. The products are manufactured in a "clean room," meaning that they have a particulate count in the environment. Before the particles in the air are counted, the room must be free of dust accumulation.

Richmond cleaned the "dirty side" of the gowning room, which is the entryway to the clean room where individuals put on a gown, booties, and a hairnet. He was also required to complete a logbook when he cleaned in a clean room because Creganna had to account to its customers. VandenHoek terminated Richmond after Creganna complained that Richmond failed to adequately clean the gowning room or complete logbook entries.

Richmond established an unemployment-benefits account with respondent Minnesota Department of Employment and Economic Development (DEED). DEED issued a determination of eligibility, which VandenHoek appealed.

¹ The name of the employer is spelled differently throughout the filings. The accurate spelling appears to be VandenHoek.

At a hearing before a ULJ, Matt Gulling, the owner and president of VandenHoek, testified that he was Richmond's supervisor. He stated that Richmond was a good employee until Richmond requested to discuss his pay and the conversation did not go as Richmond wanted. Several days later, Gulling received Creganna's complaint regarding Richmond's job performance. Gulling attempted to talk to Richmond about the complaint. Gulling testified that Richmond "listened to about half of what [Gulling] said, and then he just kind of walked away." About one week later, another supervisor attempted to talk to Richmond. But Richmond also walked away from him. At that point, it was decided that the employer was unable to communicate with Richmond to give him constructive criticism.

Richmond testified that Gulling approached him to talk about the logbook, but not cleaning. Richmond stated that he did not walk away from Gulling because Gulling sent him a text message. Richmond stated that he talked to the other supervisor about the issues but stated that the conversation was difficult because his supervisor was "mumbling . . . and pointing." He claimed that his supervisors lied when they stated that he walked away from them. Richmond stated that he did not have trouble cleaning and, although he did not understand how to complete the logbooks correctly, he nonetheless completed them. Richmond also stated that this occurred during the pandemic, and VandenHoek was not doing its part to keep its employees safe.

The ULJ decided that Richmond was ineligible for unemployment benefits, concluding that Richmond was discharged for employment misconduct because VandenHoek had the right to reasonably expect Richmond to perform his work duties. The

ULJ found that Richmond was not satisfied with the employer's response to his complaint about his pay. Soon after, Creganna complained about Richmond's work performance. Supervisors attempted to address the issue with Richmond, but Richmond walked away during the conversations. The ULJ found that, although Richmond disputed that he failed to adequately perform his work duties, his testimony was not credible "because he did not provide as much information or detail as [VandenHoek] did" and failed to provide evidence to support his claim that the supervisors falsely stated that Richmond walked away from them.

Richmond requested reconsideration, claiming that he did his job well, his supervisors lied when they asserted that he walked away from them, and the employer failed to address COVID-19 related health concerns he raised. The ULJ affirmed the decision. This certiorari appeal followed.

DECISION

When reviewing the decision of the ULJ, this court may remand for further proceedings, or reverse or modify it if the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are: "(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (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).

This court views "the ULJ's factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. In doing so,

we will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted).

An employee is ineligible for benefits if he "was discharged because of employment misconduct." Minn. Stat. § 268.095, subd. 4(1) (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 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). Whether a particular act constitutes disqualifying misconduct is reviewed de novo. *Id.* The conclusion that the employee committed a particular act is reviewed in the light most favorable to the decision and should not be disturbed so long as the conclusion is reasonably supported by the evidence. *Id.*

"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). When an employee knowingly violates an employer's instructions and directives, such action amounts to employment misconduct because it is a willful disregard of the employer's interests. *Id.* at 806. "An employee [also] has the duty to meet with the employee's supervisor to discuss complaints regarding the employee's job performance." *Snodgrass v. Oxford Props., Inc.*, 354 N.W.2d 79, 80 (Minn. App. 1984).

Thus, an employee's insubordination in refusing to cooperate with or take direction from a supervisor may constitute disqualifying employment misconduct. *Id.* at 79-80.

The ULJ determined that Richmond was discharged for employment misconduct because VandenHoek had the right to reasonably expect Richmond to adequately complete his work duties and discuss performance issues professionally. Based on caselaw, these acts constitute disqualify misconduct.

The ULJ's findings that Richmond committed the acts are supported by the evidence. Gulling testified that Creganna complained that Richmond failed to adequately clean the gowning room and sent Gulling photographs of dust and failed to complete the logbook. Richmond testified that he cleaned adequately and completed the logbooks but may not have completed them correctly.

The ULJ found Gulling to be more credible than Richmond, specifically because the performance issues surfaced after Richmond was not satisfied with discussions about his pay. Additionally, Richmond was discharged because the employer was unable to communicate with him. The ULJ found Gulling to be more credible concerning this issue because Richmond failed to explain why his supervisors would falsely claim that he walked away from them during performance discussions. *See* Minn. Stat. § 268.105, subd. 1a(a) (2020) (stating that if witness credibility "has a significant effect on the outcome of a decision, the [ULJ] must set out the reason for crediting or discrediting that testimony").

Richmond claims that he was discharged because "he was concerned about his health." This appears to be a reference to the COVID-19 pandemic. However, he raised this issue at the hearing before the ULJ but offered no evidence to support this assertion.

Accordingly, there is no basis in the record for the ULJ to find that Richmond was discharged for a reason other than employment misconduct.

Affirmed.