

*This opinion is nonprecedential except as provided by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
A21-1091**

Lonnie Moss,
Relator,

vs.

Masterson Personnel Inc,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 2, 2022
Reversed
Cochran, Judge**

Department of Employment and Economic Development
File No. 43655385-2

Lonnie D. Moss, New Hope, Minnesota (pro se relator)

Masterson Personnel, Inc., Plymouth, Minnesota (respondent employer)

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

Considered and decided by Reyes, Presiding Judge; Johnson, Judge; and
Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that he is
ineligible for unemployment benefits because he was discharged for employment

misconduct. Because the ULJ erred as a matter of law by determining that relator engaged in employment misconduct, we reverse.

FACTS

Relator Lonnie Moss was briefly employed by respondent Masterson Personnel Inc. between September 8 and October 15, 2020. After his employment ended, Moss applied for unemployment benefits. An administrative clerk employed by respondent Minnesota Department of Employment and Economic Development (DEED) denied his request. Moss appealed that decision to a ULJ, who held a de novo evidentiary hearing. The following summarizes the ULJ's factual findings and legal conclusions.

In September 2020, Moss began working for Masterson Personnel, a staffing service, and was assigned to a temporary position as a product assembler at Dittrich Specialties. On October 14, 2020, Moss received permission from the lead Dittrich Specialties' employee on his shift to leave work early due to a family emergency. The production supervisor at Dittrich Specialties then sent out an email stating that Moss had quit his job assignment. The following day, October 15, Moss learned that there was a rumor going around that he had quit, and he believed the lead employee had spread the rumor. During his shift that day, Moss saw the lead employee in the breakroom and asked him why he was spreading a rumor that Moss had quit his job assignment. The conversation became loud, and the lead employee walked away.

The production supervisor then entered the breakroom and said that he was unhappy about having to deal with the situation. The supervisor also told Moss that the supervisor, not the lead employee, had sent an email stating that Moss had quit. The supervisor was

upset and spoke in a raised voice. Moss said something to the effect of “[t]his is not that serious,” but the supervisor did not calm down. The supervisor then uttered the first syllable of the “N word.” The supervisor stopped himself from saying the entire word and immediately began repeating “I’m not a racist, I’m not a racist.” At that point, Moss gathered his belongings and started walking toward the timeclock. The supervisor followed Moss and told him, “You don’t work here anyway, you’re gone.” Following the incident, Masterson Personnel told Moss not to return to Dittrich Specialties. Masterson Personnel investigated the matter and did not offer Moss another assignment.

After the hearing, the ULJ issued a decision concluding that Moss had been discharged for employment misconduct and is therefore ineligible for unemployment benefits. In the decision, the ULJ credited Moss’s version of events, noting that his testimony described “the most probable course of events.” However, the ULJ determined that Moss engaged in employment misconduct by having “confrontations” with both the lead employee and the production supervisor and then starting to walk off the job without permission. Moss filed a request for reconsideration, and the ULJ affirmed the decision.

Moss appeals by writ of certiorari.

DECISION

Moss challenges the ULJ’s determination that his discharge was based on employment misconduct and that he is therefore ineligible for unemployment benefits. DEED agrees with Moss that the ULJ’s decision should be reversed. In a letter filed in lieu of a respondent’s brief, DEED concedes that the ULJ erred as a matter of law by concluding that Moss’s actions on October 15, 2020, constituted employment misconduct.

A person discharged for employment misconduct is ineligible for unemployment benefits. 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). Where, as here, the ULJ’s factual findings are not in dispute, this court applies a de novo standard of review to determine whether the relator’s actions were employment misconduct. *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016). We may reverse or modify a ULJ’s decision if, among other things, the decision was affected by an error of law or is unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2020).

The ULJ determined that Moss engaged in employment misconduct by having “confrontations” with the lead employee and the production supervisor and then “start[ing] to walk off [the job] before he was told to leave.” The ULJ reasoned that “[a]n employer can reasonably expect that a temporary employee will not confront co-workers at a job assignment and then walk off the job” and that “Moss’s conduct displayed a serious violation of the standards of behavior [Masterson Personnel] had a right to reasonably expect.” We agree with the parties that the ULJ’s decision is not supported by the ULJ’s own factual findings and is legally incorrect.

We begin our analysis by addressing whether Moss’s interactions with the lead employee constitute employment misconduct. The ULJ concluded that Moss engaged in employment misconduct in part by “confronting” the lead employee. While an employer has a right to reasonably expect that an employee will not engage in a hostile or angry

manner with another employee, the factual findings by the ULJ do not support the conclusion that Moss's interactions with the lead employee amounted to a serious violation of reasonable employer expectations. The only findings the ULJ made with respect to Moss's interaction with the lead employee were that Moss "asked [the lead employee] why he was spreading a rumor [that Moss] quit," the "conversation became loud," and the lead employee then "walked away." The ULJ *did not* find, and there is no record evidence, that Moss engaged in any physical aggression or used any inappropriate language. And, while the ULJ found that the conversation "became loud," there is no evidence or factual finding that Moss raised his voice at any point or was otherwise disruptive. Moss's disagreement with the lead employee, without more, does not constitute employment misconduct. *Cf. Potter v. N. Empire Pizza, Inc.*, 805 N.W.2d 872, 874, 876 (Minn. App. 2011) (concluding employee committed misconduct when he became angry with coworker *and* poked him in the ribs), *rev. denied* (Minn. Nov. 15, 2011).

The ULJ also erroneously concluded that Moss's interaction with the production supervisor supported a determination of employment misconduct. The ULJ's conclusion was based on a determination that Moss "confront[ed]" the supervisor—a determination that is not supported by the ULJ's own factual findings. The ULJ did not find that Moss confronted the *supervisor*. To the contrary, the ULJ found, and the record evidence shows, that it was the *supervisor* who confronted Moss, and it was the *supervisor* who raised his voice and began to use a racial slur. And, as with Moss's interaction with the lead employee, the ULJ made no findings, and there is no record evidence, that Moss used inappropriate language or was disruptive or physically aggressive while speaking to the

production supervisor. Nothing about Moss's conduct during his interaction with the supervisor indicates that Moss seriously violated a reasonable expectation of his employer.

Lastly, the ULJ erred by determining that Moss engaged in employment misconduct by deciding to leave work without permission. Employment misconduct does not include "conduct an average reasonable employee would have engaged in under the circumstances." Minn. Stat. § 268.095, subd. 6(b)(4) (2020). Based on the ULJ's own factual findings, the circumstances in this case were that Moss gathered his things and began walking toward the timeclock *immediately after the production supervisor began to utter a racial slur while yelling at him*. The ULJ's analysis entirely failed to consider this egregious conduct by the production supervisor. In such a situation, it is not reasonable to expect an employee to remain and accept further verbal abuse or to work the rest of his or her shift. *Cf. Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 592-93, 597 (Minn. App. 2006) (concluding that relator quit her job with good reason, and was therefore entitled to unemployment benefits, where a coworker called her names, swore at her, and threatened her). Moreover, the ULJ did not provide any legal support for the ULJ's determination that Moss's conduct of walking toward the timeclock, in light of the circumstances, constituted employment misconduct. The ULJ's analysis was conclusory and legally erroneous. Because Moss's conduct was reasonable under the circumstances, his decision to walk toward the timeclock and leave work without permission was not employment misconduct.

Accordingly, Moss's discharge was not based on any actions by Moss that constitute employment misconduct. We therefore conclude that the ULJ erred by determining that Moss is not entitled to unemployment benefits.

Reversed.