

*This opinion is nonprecedential except as provided by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
A21-1153**

Kevin R. Ballman,
Relator,

vs.

Minnesota Department of Agriculture,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 31, 2022
Affirmed
Smith, John, Judge ***

Department of Employment and Economic Development
File No. 44265876-3

Kevin Ballman, Red Wing, Minnesota (self-represented relator)

Minnesota Department of Agriculture (respondent employer)

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

Considered and decided by Slieter, Presiding Judge; Johnson, Judge; and Smith,
John, Judge.

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the determination of an unemployment-law judge (ULJ) that relator, Kevin R. Ballman, was ineligible for unemployment benefits because the ULJ made sufficient findings supported by substantial evidence that Ballman committed employment misconduct.

FACTS

Ballman started at the Minnesota Department of Agriculture (the Department) on May 1, 2000. Ballman worked as an agricultural advisor. In June 2017, Ballman received a letter of expectations from a supervisor stating, “You will maintain positive, respectful and professional working relationships and communications (electronic, telephonic & in person) with all co-workers, supervisors, managers and others in the workplace.” On July 7, 2018, Ballman’s supervisor, Denise Thiede, placed Ballman on a performance improvement plan (PIP) as “an attempt to bring to [his] attention concerns about [his] work performance and behavior.” The PIP focused on adaptability and “clear and effective communication.”

On July 9, 2018, Ballman received a negative performance review from Thiede which evaluated Ballman as “minimally successful” and stated Ballman would benefit from “improv[ing] his ability to communicate” and “accepting direction from his supervisor.” On March 13, 2019, Ballman was suspended for one day following his private use of a state vehicle.

On Friday, August 9, 2019, Thiede sent Ballman a high-importance email instructing Ballman to assist in a seed inspection the next week and requesting that Ballman reply to the email. Thiede also texted this information to Ballman. Ballman testified that he was on vacation on August 9, 2019. On Monday, August 12, Ballman left messages with colleagues saying he could not help with the assigned seed inspections, and that he didn't understand why Thiede failed to inform his colleagues of his vacation. Ballman did not contact Thiede. On August 15, Thiede emailed Ballman stating his "lack of response [was] unacceptable."

On October 4, 2019, Ballman received a five-day suspension for private use of a state vehicle, communication that was "not meeting expectations," and "continued poor workplace performance and behavior." Ballman received another PIP in December 2019, which was again focused on improving communication and adaptability.

At staff meetings on January 22-23, 2020, Ballman reportedly turned his chair to face away from the presenter, noisily crushed cans, arrived late, and left early. These reports came from three different meeting attendees who each reported different inattentive behavior from Ballman.

In February 2020, Ballman was suspended with pay while an investigation into his conduct took place. On December 1, 2020, the Department discharged Ballman citing inappropriate use of his state vehicle and computer, disrespectful communication and behavior, and deficient performance based on Ballman's failure to meet deadlines and follow directions.

Respondent Department of Employment and Economic Development (DEED) denied Ballman unemployment benefits because the Department discharged him for employment misconduct. Ballman appealed the ineligibility decision, and an evidentiary hearing was conducted. On May 19, 2021, a ULJ determined Ballman was ineligible for unemployment benefits because of Ballman’s “behavior in the January 2020 meetings, and his general pattern of communication with management, Thiede in particular.” The ULJ also determined that it was “unnecessary to reach conclusions” on the other listed reasons for Ballman’s discharge. Ballman requested reconsideration. Ballman disputed the ULJ’s conclusion that his behavior was disrespectful and challenged the underlying factual findings. On review, the ULJ stated that “none of the information in his request for reconsideration . . . would change the outcome” and “the employer’s information was more reliable” than that presented by Ballman. The ULJ affirmed the previous decision.

DECISION

Ballman challenges the ULJ’s factual findings and credibility determinations supporting the conclusion that he was ineligible for unemployment benefits. This court may affirm the ULJ’s decision, remand for further proceedings, or reverse the decision if the findings or conclusions are “unsupported by substantial evidence in view of the hearing record.” Minn. Stat § 268.105, subd. 7(d) (2020). Ballman argues this court should reverse the ULJ’s decision because substantial evidence does not support the ULJ’s credibility determinations and factual findings. We disagree.

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

This court views a “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). “Substantial evidence is ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” *Posey v. Securitas Sec. Servs. USA, Inc.*, 879 N.W.2d 662, 665 (Minn. App. 2016) (citing *Minneapolis Van & Warehouse Co. v. St. Paul Terminal Warehouse Co.*, 180 N.W.2d 175, 178 (Minn. 1970)). Thus, we defer to the factual findings and credibility determinations of the ULJ so long as they are supported by substantial evidence.

Ballman challenges the factual findings of the ULJ. While Ballman does not cite legal authority, his brief is best construed as a challenge that no substantial evidence supports the ULJ’s findings about the August 2019 inspections and the January 2020 staff meetings. Ballman contends that “the evidence does not contain any accusation of disrespect” and the “evidence documents [he] follow[ed] through with Ms. Thiede’s request,” about the August 2019 inspections. Ballman also argues the evidence shows he “fully participated” in the January 2020 staff meetings.

Because the ULJ found “the employer’s information was more reliable,” this panel must examine whether the record contains substantial evidence to support the ULJ’s factual findings and credibility determination. *See Skarhus*, 721 N.W.2d at 344. Ballman argues

the August 9, 2019, email communication from Thiede did not contain the word “priority” and on August 12 Ballman completed “directed weekly activity.” The ULJ found Thiede “made it clear that [Ballman] was to prioritize” the seed inspection. The record supports the ULJ’s finding. As addressed in Ballman’s brief, Thiede emailed the staff asking them to “support this program” and “notify [Thiede] if [] not able to meet [] requests for inspection.” Thiede’s email directly to Ballman also stated the inspection “need[ed] [Ballman’s] assistance” and was sent with high importance. These two pieces of record evidence constitute substantial evidence supporting the district court’s finding that Thiede “made it clear” that Ballman needed to prioritize the seed inspection.

Ballman also contends that “the evidence does not support any accusation of disrespect” in the communication between Ballman and Thiede. The ULJ found that Ballman’s tone of communication with Thiede was “disrespectful.” The record supports this finding. Ballman’s poor performance reviews in July 2018 and December 2019 and the PIPs in June 2017 and July 2018 focus on the issue of poor workplace communication. Additionally, Ballman’s suspension in March 2019 states Ballman’s “workplace communications are not meeting expectations and have been viewed by others as inappropriate.” This evidence supports the ULJ’s finding that Ballman’s workplace communication was disrespectful.

Lastly, Ballman contests that his behavior at the January 2020 staff meetings was inappropriate stating that he “fully participated in the meeting.” Ballman also theorizes that “two of the three complaints” about his behavior during these meetings were made by management who had “sufficient ability to have dealt with any perceived issues.” The ULJ

relied on the three complaints in determining that “Ballman manifested his disregard for the meetings and the presenters.” Ballman argues “it is imperative that the names of the complainants be disclosed to analyze the credibility of those complaints.” The ULJ specifically considered the credibility of the three complaints and found them credible in part because they were “different vantage points at different times.” Ballman’s belief that the complaints were not in good faith was also raised during the hearing and addressed in the ULJ’s reconsideration. But the concerns were dismissed because the employer presented “more reliable” evidence. The three complaints are substantial evidence of Ballman’s behavior. Because substantial evidence supports the ULJ’s findings, we defer to the ULJ’s credibility determinations that the employer’s information to be “more reliable.”

II. The ULJ did not err in concluding Ballman’s actions were employment misconduct.

To the extent that Ballman challenges if the ULJ’s factual findings demonstrate employment misconduct, the issue of whether factual findings demonstrate employment misconduct is an issue of law, reviewed de novo. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). Appellate courts review whether the applicant engaged in the conduct “in the light most favorable to the decision and should not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them.” *Id.* (quotation omitted). But appellate courts review whether a particular act constitutes disqualifying misconduct de novo. *Id.* Employment misconduct is “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 described above, “viewed in the light most favorable to the decision,” Ballman engaged in disrespectful communications and disrespectful behavior during the January 2020 staff meetings. Violation of an employer’s policy is employment misconduct. *See Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002) (“As a general rule, refusing to abide by an employer’s reasonable policies and requests amounts to disqualifying misconduct.”). Ballman received a June 2017 email expressing the policies and expectations regarding communications, which stated “[y]ou will maintain positive, respectful and professional working relationships and communications (electronic, telephonic & in person) with all co-workers, supervisors, managers and others in the workplace.” Ballman’s PIPs also articulated the expected improvement in workplace communications. Lastly, Thiede’s email about seed inspections requested that she be notified if an employee could not meet a request for an inspection. Ballman violated the policy surrounding workplace communication by both failing to communicate with Thiede about the seed inspections and communicating in a disrespectful manner, as evidenced by his poor performance reviews and suspensions.

Ballman’s behavior in the January 2020 staff meetings also violated the policy of respectful in-person communication and workplace relationships. “Even a single incident can be misconduct if it represents a sufficient enough disregard for the employer’s expectations.” *Blau v. Masters Rest. Assocs., Inc.*, 345 N.W.2d 791, 794 (Minn. App. 1984). Ballman’s disruption of the staff meeting, as detailed in the three complaints,

establishes a sufficient disregard for the expectation of maintaining “positive, respectful, and professional working relationships.”

Given that the ULJ’s credibility determination and findings of fact are supported by substantial evidence and that Ballman’s actions violated the Department’s policies and constituted employment misconduct, the ULJ did not err by determining Ballman was ineligible for unemployment benefits based on his employment misconduct.

Affirmed.