STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1550

Nathan M. Christenson,
Relator,

vs.

RIHM Motor Company,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed August 8, 2022
Affirmed
Gaïtas, Judge

Department of Employment and Economic Development
File No. 45657033-2

Nathan M. Christenson, Albert Lea, Minnesota (self-represented relator)

RIHM Motor Company, South St. Paul, 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 Gaïtas, Presiding Judge; Cochran, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Relator Nathan M. Christenson challenges the determination of an unemployment-law judge (ULJ) that he was discharged for employment misconduct. We affirm.

FACTS

Christenson began working for respondent-employer RIHM Motor Company (RIHM) in April 2018. He worked in shipping and receiving. On March 4, 2021, Christenson was instructed to dispose of a pallet of diesel particulate filters (filters),[1] but he instead put them in his personal vehicle. Christenson was discharged on March 8 for violating the company policy that prohibits "theft or unauthorized removal or possession of company property."

Subsequently, Christenson applied for unemployment benefits with respondent Minnesota Department of Employment and Economic Development (DEED). Christenson's application for unemployment benefits stated that he had taken "nuts, bolts, and some washers that were to be thrown in the garbage," but that he was unaware of a policy "saying you cannot take trash home with you." It stated that "there were several employees doing the same thing and not a single one has been let go." And Christenson's response to a request for additional fact-finding stated that he had told his manager, "[M]aybe I'll just take them and see if I can do something with them," and the manager responded, "I don't care what you do with them; I just need the room so I can order more parts." DEED found that RIHM had discharged Christenson for employment misconduct and issued a determination of ineligibility for employment benefits.

Christenson appealed the determination and had an evidentiary hearing before a ULJ. At the hearing, Christenson's manager testified that another employee reported that

[1] Diesel particulate filters are similar to catalytic converters.

Christenson had taken the pallet of filters. The manager testified that he then reviewed security-camera footage, which showed Christenson loading the pallet containing six to eight filters into Christenson's personal vehicle with a forklift. He estimated that the filters had a total value between $5,000 and $6,000. The manager testified that an employee policy required employees to obtain written approval from upper management to take items that were to be scrapped or discarded. This policy helped the company manage inventory and tax write-offs. Although the manager did not know whether the policy was explained to employees, he testified that it was in the employee handbook. Christenson had signed an updated version of that handbook in February 2021. The manager also gave a recent example of how the policy was used during a store relocation. According to the manager's testimony, Christenson did not request permission from him or any other managers to take the filters.

Christenson also testified at the evidentiary hearing. He admitted that he removed six filters, but he testified that he had obtained permission from his manager. Christenson also testified that "to [his] knowledge, everyone had access to everything that was being scrapped or thrown away." Christenson acknowledged receiving an employee handbook. But he denied knowing about RIHM's policy prohibiting the unauthorized removal of company property.

Following the hearing, the ULJ determined that RIHM discharged Christenson for employment misconduct and that Christenson was ineligible for unemployment benefits. The ULJ found that the manager's testimony had been credible "because it was detailed, logical, and based on first-hand information," and that "the credible evidence supports that

Christenson did not have permission to remove the items he took from the employer." Additionally, the ULJ determined that Christenson's conduct in removing the filters without permission was "intentional and a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee."

Christenson requested reconsideration. The ULJ affirmed the decision on reconsideration.

Christenson appeals.

DECISION

When reviewing the decision of the ULJ, we may affirm, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator may 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).

"We view 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). "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) (quoting *Minneapolis Van & Warehouse Co. v. St. Paul Terminal Warehouse Co.*, 180 N.W.2d 175, 178 (Minn. 1970)).

Whether an employee committed employment misconduct "is a mixed question of fact and law." *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). But whether a particular act amounts to employment misconduct is a question of law that appellate courts review de novo. *Id.*

Here, the ULJ found:

> An employer has the right to reasonably expect that an employee will not take the employer's property from the scrap bin without permission. RIHM's policy requiring prior written approval is based on a reasonable business need. Christenson did not know he needed formal written approval. However, he was aware that he needed to ask the employer for permission before taking any items from the scrap bin. He removed a pallet of scrapped filters on March 5, 2021 without permission. The preponderance of the evidence shows that Christenson's conduct was intentional and is a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee.

Christenson challenges the ULJ's finding. He argues that the ULJ erred by finding the manager's testimony credible. Generally, "[c]redibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus*, 721 N.W.2d at 345. But "[w]hen the credibility of a witness testifying in a hearing 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). If the parties presented conflicting evidence, this court must defer to the ULJ's findings and not reweigh

the evidence on review. *Whitehead v. Moonlight Nursing Care, Inc.*, 529 N.W.2d 350, 352 (Minn. App. 1995).

The manager's testimony clearly had a significant effect on the ULJ's decision. In turn, the ULJ explained the decision to credit the manager's testimony. Specifically, the ULJ found the manager's testimony credible "because it was detailed, logical, and based on first-hand information." This explanation satisfied section 268.105, subdivision 1a(a), which requires the ULJ to identify the reasons for a credibility determination that significantly impacts the ultimate decision. Thus, the ULJ did not err in crediting the manager's testimony.

Although Christenson argues that his account of the events was more accurate than the manager's, as a reviewing court, we cannot reweigh the evidence. *See Whitehead*, 529 N.W.2d at 352. Given our standard of review, we must defer to the ULJ's credibility determinations, and we do so here. *See id.*

Based on our review of the record, we conclude that substantial evidence supports the ULJ's findings regarding Christenson's conduct. The manager's testimony established that Christenson took filters without obtaining the employer's permission.

Christenson also contends that the ULJ erred by concluding that he engaged in employment misconduct. 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 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). "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).

Reviewing de novo, we conclude that Christenson's conduct was employment misconduct. It is reasonable that an employer would expect an employee to follow written employee policies, including a policy requiring an employee to obtain the employer's permission before taking the employer's property. *See* Minn. Stat. § 268.095, subd. 6(a). And even a single incident of employee theft can constitute employment misconduct, even if the items are of de minimis value. *See, e.g.*, *Skarhus*, 721 N.W.2d at 344 (concluding that employee's theft of food valued at less than four dollars was employment misconduct because the employer could no longer trust employee with her job responsibilities).

Christenson argues that his conduct was not intentional, negligent, or indifferent because he spoke with his manager "about possibly taking the parts home." As noted, however, the ULJ specifically rejected Christenson's testimony that he had received permission to take the filters.

Christenson also contends that it was "common practice" for RIHM employees to "help themselves" to materials slated for trash. But "[v]iolation of an employer's rules by other employees is not a valid defense to a claim of misconduct." *Dean v. Allied Aviation Fueling Co*., 381 N.W.2d 80, 83 (Minn. App. 1986); s*ee also Sivertson v. Sims Sec., Inc.*, 390 N.W.2d 868, 871 (Minn. App. 1986) ("Whether or not other employees violated [the employer's] same rules and were disciplined or discharged is not relevant."), *rev. denied* (Minn. Aug. 20, 1986).

Christenson deliberately violated a reasonable employment policy by taking the employer's property without permission. His conduct therefore constituted employment misconduct.

Affirmed.