STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1603

Brandon L. Siems,
Relator,

vs.

Courtesy Corporation - McDonald's,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed September 26, 2022
Affirmed
Larson, Judge

Department of Employment and Economic Development
File No. 46649033-3

Brandon L. Siems, Zumbrota, Minnesota (pro se relator)

Courtesy Corporation - McDonald's, Onalaska, Wisconsin (respondent employer)

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

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

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

NONPRECEDENTIAL OPINION

LARSON, Judge

Relator Brandon L. Siems appeals an unemployment-law judge's (ULJ) determination that he does not qualify for unemployment benefits. We affirm.

FACTS

Siems, an individual diagnosed with autism-spectrum disorder, worked as a full-time maintenance employee for Courtesy Corporation—McDonald's (McDonald's) from November 1, 2018, to May 30, 2021. McDonald's had a sexual-harassment policy prohibiting unwelcome advances or flirtations in the form of words, actions, or unwelcomed contact.

During Siems's employment, he frequently communicated with a colleague[1] via Snapchat, an internet messaging application. Siems sent the colleague Snapchat messages "about once a day." The colleague did not object to these communications. Siems would also wait for the colleague in the parking lot to give her cards with money inside. In total, Siems gave the colleague approximately $2,500.

In March 2021, the colleague decided she no longer wanted to communicate with Siems, stopped talking with him, and blocked him on Snapchat. Before doing so, the colleague messaged Siems:

> Sorry I can't talk anymore I am probably getting . . . rid of Snapchat and going to stay off my phone as much as possible because I have to focus on some other stuff so I won't be able

[1] At the time of these events, Siems was 23 and the colleague was 17. Siems argues the colleague's age was irrelevant to whether he committed employment misconduct. With this context in mind, we refer to her as "the colleague."

> to talk to you for a while. Also I don't work tomorrow sorry again but if you get deleted off my snap it's because I deleted my account sorry again.

Siems then asked a coworker to speak to the colleague. After speaking to the colleague, the coworker told Siems, "[s]he basically said that she didn't really wanna be friends" and "that she felt kind of uncomfortable." Siems responded with dismay that the colleague did not want to speak with him.

On May 19, 2021, Siems approached the colleague when she arrived at work, gave her a card with money, and said, "[d]on't say anything to work." Siems testified that, at that time, he and the colleague were not "technically speaking." That evening, Siems found the colleague's address online and walked eight miles to the colleague's house. He testified that he did so because she blocked him on Snapchat.

The next day, the colleague complained to a supervisor that Siems communicated with her after she asked him to stop and that he visited her house. McDonald's took written statements from the colleague and two other employees with knowledge of the situation. McDonald's then terminated Siems's employment, citing its sexual-harassment policy.

Following his termination, Siems applied for unemployment benefits with Respondent Minnesota Department of Employment and Economic Development (DEED). DEED administratively determined that Siems met the eligibility requirements for unemployment benefits. Specifically, DEED found that Siems's actions "were not employment misconduct because the violation or failure was not significant or it was unintentional." McDonald's appealed that determination.

The chief ULJ mailed a notice on July 2, 2021, informing Siems that the ULJ would hold a hearing on McDonald's appeal on July 20, 2021. The ULJ conducted a hearing on that date. Siems, a McDonald's human-resources manager, and Siems's McDonald's area supervisor appeared at the hearing. The ULJ told Siems that he had the right to request that the ULJ reschedule the hearing to allow Siems to obtain documents or subpoena witnesses; Siems did not make any such request. At the hearing, McDonald's did not submit their sexual-harassment policy into evidence, but the McDonald's human-resources manager testified about the policy. McDonald's also submitted written statements from the colleague and two other employees describing Siems's contacts with the colleague. Following the hearing, the ULJ determined that McDonald's discharged Siems for employment misconduct when he violated the sexual-harassment policy, and that Siems's conduct was not a consequence of his autism-spectrum disorder. Therefore, Siems did not qualify for unemployment benefits.

Siems filed a request for reconsideration. As part of the request, Siems disputed that his conduct was not a consequence of his autism-spectrum disorder. He also asked for an additional hearing. The ULJ denied both requests. In denying the request for reconsideration, the ULJ found that Siems's "sworn testimony that a medical doctor has not told him his actions were a consequence of his autism spectrum disorder" contradicted his arguments. The ULJ also noted Siems's testimony "that he had friends he talked to every day and was able to independently obtain employment." And the ULJ highlighted Siems's testimony that "he receives no mental health treatment or services to assist him with his activities of daily living."

This certiorari appeal follows.

DECISION

Siems challenges the ULJ's decision that he is ineligible for unemployment benefits. When reviewing the ULJ's decision, we may affirm the decision or remand for further proceedings. Minn. Stat. § 268.105, subd. 7(d) (2020). Alternatively, we may reverse or modify the ULJ's decision when it prejudices relator because the decision, among other things, derives from unlawful procedure, relies on an error of law, or is unsupported by substantial evidence. *Id.*, subd. 7(d)(3)-(5).

Siems argues the ULJ erred when she (1) determined Siems's conduct constituted employment misconduct; (2) denied Siems a fair hearing; and (3) denied Siems's request for an additional hearing. We address each argument in turn.

I.

Siems first argues the ULJ erred when she determined his conduct constituted employment misconduct. When an employer discharges an employee for employment misconduct, the employee is disqualified from unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2020); *see also Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 27 (Minn. App. 2007). "Whether an employee engaged in employment misconduct presents a mixed question of law and fact." *Wichmann*, 729 N.W.2d at 27. "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." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citation omitted). "In doing so, we will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Id.*

(citing Minn. Stat. § 268.105, subd. 7(d)). But we review whether the facts show an employee engaged in employment misconduct de novo. *See id.*

A. Employment Misconduct

Siems contends that he did not engage in employment misconduct because his conduct does not meet the "sexual harassment" definition in the Minnesota Human Rights Act (MHRA). *See* Minn. Stat. § 363A.03, subd. 43 (2020). But we must determine whether Siems engaged in employment misconduct under the Minnesota Unemployment Insurance Law (unemployment-insurance law), not whether Siems's actions were sexual harassment under the MHRA. Under the unemployment-insurance law, employment misconduct is "a serious violation of the standards of behavior the employer has the right to reasonably expect." Minn. Stat. § 268.095, subd. 6(a). "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).

Substantial evidence supports the following ULJ findings. McDonald's had a sexual-harassment policy that prohibited unwelcome contact, the policy explained that termination could result from violating the policy, and Siems was aware of the policy. Siems pursued a relationship with the colleague. During this time, he messaged the colleague about once a day. The colleague blocked Siems on Snapchat to prevent unwelcome communication. Siems asked a coworker to contact the colleague; the coworker expressly told Siems the colleague did not want contact with him. After learning the colleague did not want Siems to contact her, Siems approached the colleague. At that encounter, Siems admitted he said "[d]on't say anything to work" because he thought his

conduct might violate a McDonald's policy. Later that day, Siems looked up the colleague's address, walked eight miles to her house, and told her grandparents he wanted to give the colleague a card and talk with her. Siems admitted that he went to the colleague's house because he could not message her on Snapchat.

Based on this record, we conclude that Siems engaged in employment misconduct. McDonald's sexual-harassment policy prohibited unwelcome contact. *Schmidgall*, 644 N.W.2d at 804. And outside the sexual-harassment policy, McDonald's could reasonably expect an employee to cease social contact when expressly told the contact was unwelcome. *See* Minn. Stat. § 268.095, subd. 6(a); *Brown v. Nat'l Am. Univ.*, 686 N.W.2d 329, 333 (Minn. App. 2004) (noting employment misconduct can occur in the absence of a written policy), *rev. denied* (Minn. Nov. 16, 2004). Here, Siems continued social contact with the colleague despite knowledge that the contact was unwelcome. Siems's acts, therefore, constitute employment misconduct.

B. Mental-Impairment Exception

Siems argues a mental-impairment exception applies to his case. The employment-misconduct statute includes an exception for "conduct that was a consequence of the applicant's mental illness or impairment." Minn. Stat. § 268.095, subd. 6(b)(1) (2020).

The ULJ found that Siems had been diagnosed with autism, that he did not receive mental-health treatment, that he was independent in his activities, and, therefore, Siems's conduct was not a consequence of his mental impairment. On reconsideration, the ULJ further explained that it based its decision on Siems's sworn testimony that (1) "a medical doctor has not told him his actions were a consequence of his autism spectrum disorder";

(2) "he had friends he talked to every day and was able to independently obtain employment"; and (3) "he receives no mental health treatment or services to assist him with his activities of daily living." Substantial evidence supports these findings.

Based upon these findings, we conclude that the mental-impairment exception does not apply. No evidence in the record shows that Siems continued to contact the colleague because Siems has autism. Further, the record indicates that Siems knew his conduct violated McDonald's policy; he testified that he told the colleague not to say anything to work because he was afraid it violated "some sort of policy in [McDonald's] handbook." The evidence shows that autism did not prevent Siems from understanding that his behavior could potentially have adverse consequences for his employment. Therefore, we conclude that Siems's conduct was not a consequence of his autism and the mental-impairment exception does not apply.

For these reasons, we affirm the ULJ's decision that McDonald's discharged Siems for employment misconduct.

II.

Siems next asserts that the ULJ denied him a fair hearing. A hearing to determine qualification for unemployment benefits is an evidence-gathering inquiry rather than an adversarial proceeding. Minn. R. 3310.2921 (2021). The ULJ must ensure that all relevant facts are developed and conduct the hearing in a manner "that protects the parties' rights to a fair hearing." *Id.* Siems offers two claims that he did not receive a fair hearing, arguing the ULJ improperly: (1) provided Siems the hearing notice the day before the hearing; and

(2) allowed inadmissible hearsay. Neither of these claims show the ULJ denied Siems a fair hearing.

A. Adequate Notice

Siems first argues he did not receive a fair hearing because he only received notice the day before the hearing. In effect, Siems claims the ULJ did not provide the statutorily required notice or comply with constitutional due process. We review these questions de novo. *See In re Grand Rapids Pub. Utils. Comm'n*, 731 N.W.2d 866, 875 (Minn. App. 2007) (constitutional question); *Reider v. Anoka-Hennepin Sch. Dist. No. 11*, 728 N.W.2d 246, 249 (Minn. 2007) (statutory question).

Beginning with the statutory question, under the unemployment-insurance law and its implementing regulations, the chief ULJ must mail notice "not less than ten calendar days before the date of the hearing." Minn. Stat. § 268.105, subd. 1 (2020); *see also* Minn. R. 3310.2905, subp. 2 (2021) (substantially similar). The chief ULJ followed the notice requirement. The chief ULJ mailed Siems's notice on July 2, 2021—18 days before the hearing. Further, the ULJ offered Siems the opportunity to reschedule the hearing. Siems declined the opportunity. As such, the ULJ complied with the notice requirements and did not err when it proceeded on the scheduled date.

The notice also comported with constitutional due process. The United States and Minnesota Constitutions provide that no person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amends. V, XIV, § 1; Minn. Const. art. I, § 7. "Unemployment benefits are an entitlement protected by the constitutional right to procedural due process." *Godbout v. Dep't of Emp. & Econ. Dev.*, 827 N.W.2d 799, 802

(Minn. App. 2013). When a due-process challenge revolves around the adequacy of notice, this court determines whether the notice was "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* (quotation omitted). Here, Siems does not contest the notice's contents, only its timing. And, as set forth above, the notice complied with the statutory timeframe, and the ULJ provided Siems an opportunity to reschedule the hearing. Based on this record, we conclude that the notice Siems received comported with constitutional due process.

B. Hearsay

Siems next argues he did not receive a fair hearing because the ULJ admitted hearsay evidence. Specifically, Siems contests the ULJ's decision to allow testimony regarding McDonald's sexual-harassment policy and written statements from the colleague and two other employees. "An unemployment law judge may receive any evidence that possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs." Minn. R. 3310.2922 (2021). We review a ULJ's evidentiary rulings for abuse of discretion. *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 566 (Minn. App. 2001), *rev. denied* (Minn. Nov. 13, 2001).

Regarding the sexual-harassment policy, Siems correctly observes that McDonald's did not offer the policy into evidence. Rather, McDonald's submitted testimony from a McDonald's human-resources manager regarding the policy's contents. We conclude the ULJ did not abuse her discretion when she admitted the McDonald's human-resources

manager's hearsay testimony because she was familiar with the sexual-harassment policy.[2] Minn. R. 3310.2922 (2021).[3]

And the ULJ did not abuse her discretion in relying on written statements from the colleague and two other employees. These statements were signed, dated, and possessed probative value—first-hand accounts of the incidents at issue. *See, e.g.*, *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 288 n.1 (Minn. 2006) (relying on a third-party letter).

For these reasons, we reject Siems's claims that he did not receive a fair hearing.

III.

Siems finally argues that the ULJ abused her discretion when on reconsideration she denied his request for an additional hearing. *See Skarhus*, 721 N.W.2d at 345 (applying abuse-of-discretion standard to ULJ's reconsideration request denial). Upon receipt of a timely request for reconsideration, the ULJ must issue an order affirming the original decision, modifying the original decision, or setting aside the original decision and ordering an additional hearing. Minn. Stat. § 268.105, subd. 2(f) (2020). A ULJ must order an additional hearing if a party shows that evidence not submitted at the original hearing

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[2] While not dispositive here, there are cases concluding that a ULJ abuses his or her discretion when an employment policy is not admitted into the record. *See, e.g.*, *Choronzy v. Viracon, Inc.*, No. A17-1018, order op. at 3 (Minn. App. Mar. 7, 2018) (remanding to the ULJ when ULJ failed to enter an attendance policy into the record). We reiterate that, where one exists, it is a best practice for ULJs to put the written policy into the record.

[3] We observe that we have issued two nonprecedential opinions that touch on this issue. *Erickson v. OTG Mgmt., LLC*, No. A17-1154, 2018 WL 3014579, at *4 (Minn. App. June 18, 2018) (affirming ULJ's reliance on testimony rather than written policy); *Umana v. FedEx Ground Package Sys., Inc.*, No. A16-1964, 2017 WL 3863839, at *3 (Minn. App. Sept. 5, 2017) (allowing testimony on a "no call/no show policy"). While these opinions are nonprecedential, we recognize their persuasive value. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

"would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence." *Id.*, subd. 2(c)(1) (2020).

In his request for reconsideration, Siems asked the ULJ to allow C.M., a McDonald's employee, to testify. But Siems did not describe the testimony C.M. would provide. Thus, Siems failed to show that C.M.'s testimony would likely change the outcome, and the ULJ did not abuse her discretion in declining to hold an additional hearing.

Affirmed.