STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1457

Ahmad Daniel,
Relator,

vs.

Honeywell International, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed June 12, 2023
Affirmed
Reyes, Judge

Department of Employment and Economic Development
File No. 48742828-3

Ahmad Daniel, Minneapolis, Minnesota (self-represented relator)

Honeywell International, Inc., Minneapolis, Minnesota (respondent employer)

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

Considered and decided by Larson, Presiding Judge; Reilly, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Relator challenges the determination by an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because his refusal to abide by his employer's COVID-19 testing policy constituted disqualifying employment misconduct. We affirm.

FACTS

Self-represented relator Ahmad Daniel worked at Honeywell International Inc. from September 2019 to April 2022. In April 2021, Honeywell implemented a COVID-19 vaccination policy. Relator submitted a request for a religious exemption/accommodation. Honeywell granted the request and allowed relator to retain his employment without vaccination "provided [he] strictly comply with the terms and conditions of the accommodation requirements." The terms and conditions included nasal or mouth-swab testing that involved uploading weekly COVID-19 test results to a Honeywell application. The accommodation stated, "Failure to comply with the test submission mandates for three consecutive weeks, or five weeks in total, will result in your termination of employment without severance."

During March and April of 2022, relator failed to submit any COVID-19 test results as required by his accommodation under Honeywell's policy. Honeywell initially placed him on unpaid suspension and later discharged him for violating the policy. On April 8, 2022, Honeywell discharged relator for violating its policy.

Relator applied for unemployment benefits with respondent Department of Employment and Economic Development (DEED). DEED determined that he was

ineligible because Honeywell discharged him for employment misconduct. Relator appealed the determination and requested a hearing before a ULJ. The ULJ held the hearing by telephone in June 2022, and only relator testified.

Relator testified that he is Christian, that his religion is "the bible," that he believes his "body is the temple of God," and that he adheres to certain dietary restrictions. Relator avoids medical treatment and believes that modern physicians are "physicians of no value" and "have yet to cure anything." He also believes the law protects him from needing to test for COVID-19.

Following the hearing, the ULJ found that relator "feels he should have free choice to decide whether to take a medical test," that relator's testimony was not credible, and that his refusal to test for COVID-19 was not based on sincerely held religious beliefs. The ULJ determined that relator committed employment misconduct by failing to comply with Honeywell's reasonable COVID-19 policy and that he was therefore ineligible for benefits. Relator requested reconsideration, and the ULJ affirmed. Relator appeals by writ of certiorari.

DECISION

Relator claims that the ULJ erred by determining that Honeywell discharged him for employment misconduct, arguing that Honeywell's COVID-19 policy requiring him to get and submit weekly COVID-19 tests pursuant to his religious exemption from receiving the COVID-19 vaccine amounted to "unlawful stipulations" and "required [him] to defy [his] religious faith."

"Whether an employee committed employment misconduct is a mixed question of fact and law." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). "[W]hether the act committed by the employee constitutes employment misconduct is a question of law, which we review de novo." *Id.* But "[w]e view the ULJ's factual findings in the light most favorable to the decision" and defer to the ULJ's credibility determinations. *Id.* "[T]his court will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *rev. denied* (Minn. Oct. 1, 2008).

A person discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2022). "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) (2022). "[A]n employee's decision to violate knowingly a reasonable policy of the employer is misconduct." *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 806 (Minn. 2002). Generally, "if the request of the employer is reasonable and does not impose an unreasonable burden on the employee, the employee's refusal to abide by the request constitutes misconduct." *Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 206 (Minn. App. 2004), *rev. denied* (Minn. Mar. 30, 2004). Reasonableness varies by the circumstances of the case. *Sandstrom v. Douglas Mach. Corp.*, 372 N.W.2d 89, 91 (Minn. App. 1985). But even when the definition of misconduct is satisfied, a decision denying unemployment benefits may be subject to reversal if it violates constitutional rights. Minn. Stat. § 268.105, subd. 7(d)(1) (2022). Unemployment benefits may not be

constitutionally denied when an employee's conduct was based on their sincerely held religious belief. *Frazee v. Ill. Dep't of Emp. Sec.*, 489 U.S. 829, 834 (1989).

I. Relator committed employee misconduct by violating Honeywell's reasonable COVID-19 policy.

Relator appears to assert that Honeywell's COVID-19 accommodation policy requiring submissions of weekly COVID-19 test results amounted to "unlawful stipulations" and that he has "legal rights" that protect him from that policy.[1] We disagree.

Relator received an exemption from Honeywell's COVID-19 vaccination policy so he could continue employment without the vaccine, with certain requirements, including submissions of weekly test results. The ULJ determined that "Honeywell has the right to reasonably expect that unvaccinated employees will undergo [and submit] weekly COVID-19 tests to protect the safety of its workforce." Relator does not dispute that he failed to adhere to this policy because he did not test for COVID-19.

Relator does not cite to any caselaw for the proposition that it is unlawful or unreasonable for an employer to require an employee who is exempt from a COVID-19 vaccination policy to test for COVID-19, and we are unaware of any such caselaw.[2]

---

[1] Relator also asserts several grievances against Honeywell human-resources employees for their approach to unpaid leave, management of "disciplinary action," "willful deceit" including document forging, and overall "target[ing]" behavior towards him. These arguments are irrelevant to the unemployment-benefits determination at issue in this appeal, so we do not address them. *See* Minn. Stat. § 268.105 (2022) (requiring this court to review the ULJ's eligibility decision); *see also Eley v. Southshore Invs., Inc.*, 845 N.W.2d 216, 222 (Minn. App. 2014) (relying on *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) and declining to address issues not considered by ULJ).

[2] To the extent that relator argued to the ULJ that (1) the Nuremberg Code, established by the United States Military Tribunal, "as a standard against which to judge German scientists who experimented with human subjects," *United States v. Stanley*, 483 U.S. 669,

Moreover, in a nonprecedential opinion, this court concluded that a company policy requiring a front-desk employee to be vaccinated against COVID-19 was "reasonable under the circumstances" in part because the employer "mandated the vaccine[] for health and safety reasons." *Costello v. Fond du Lac Rsrv.*, No. A22-0218, 2022 WL 3348567, *2-3 (Minn. App. Aug. 15, 2022).[3] Moreover, in *Sun v. Pepperl & Fuchs, Inc.*, we concluded that a COVID-19 policy was reasonable and stated, "The employer policy in this case is more lenient than the policy in *Costello* because Sun had the option of complying with the policy in either of two ways: getting vaccinated or getting tested and wearing a mask." No. A22-0472, 2022 WL 17748244, at *1 (Minn. App. Dec. 19, 2022). While *Costello* and *Sun* are nonprecedential cases with no binding authority, both have persuasive value. Minn. R. Civ. App. 136.01, subd. 1(c); *see also City of St. Paul v. Eldredge*, 788 N.W.2d 522, 526-27 (Minn. App. 2010) (noting that nonprecedential opinions of court of appeals are not binding authority but may have persuasive value), *aff'd*,

687 (1987) (Brennan, J. concurring in part and dissenting in part), protects him from COVID-19 testing; (2) the Americans with Disabilities Act prohibits employers from "invasive inquiries" about employee medical status; and (3) Minn. Stat. § 181.974 (2022), incorporating the Genetic Information Nondiscrimination Act (GINA), prohibits COVID-19 diagnostic testing, he did not develop these arguments with citations to law in his brief to this court. Because prejudicial error is not obvious on mere inspection, these arguments are forfeited. *State v. Mod. Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997).

[3] Similarly, in *Larson v. Minn. State Coll. Se-Winona*, No. A22-0689, 2023 WL 193984, at *1 (Minn. App. Jan. 17, 2023), the ULJ considered a policy requiring employees to either get vaccinated or test weekly for COVID-19. Larson objected to both requirements, asserting religious grounds and seeking accommodations. *Id.* This court concluded that the company's COVID-19 policy was reasonable. *Id.* In *Potter v. St. Joseph's Med. Ctr.*, we concluded that a policy "requiring all staff not otherwise exempted, to receive the influenza vaccine" was reasonable based on the company's aspiration "to have zero preventable harm for patients and staff" in a healthcare setting. No. A18-0736, 2018 WL 6729836, at *2, *4-5 (Minn. App. Dec. 24, 2018) (quotation omitted).

800 N.W.2d 643 (Minn. 2011). The employer policy in this case is more lenient than the policy in *Costello* and similar to the policy in *Sun* because relator had the option of complying with the policy by getting vaccinated or submitting test results.

Finally, submitting COVID-19 test results constituted a minimal burden for relator. It required him to take a test approved by the U.S. Food and Drug Administration and "be observed by an authorized telehealth proctor, site designee (if applicable) or other Company approved individual." Relator then needed to upload the test results to a company application, which treated COVID-19 test results as "confidential medical records."

Appellant committed employment misconduct by failing to follow Honeywell's reasonable COVID-19 policy.

II. The ULJ did not clearly err by finding that relator's proffered reasons for refusing to comply with the COVID-19 testing policy were not based on sincerely held religious beliefs.

Relator next argues that the ULJ erred by finding that his refusal to test for COVID-19 was not based on a sincere religious belief. We are not persuaded.

Relator asserts that Honeywell's COVID-19 policy requiring that he get weekly COVID-19 tests and submit the results "required [him] to defy [his] religious faith." He asserts that he was upholding his religious faith "by practicing [his] God given right of 'control over [his] medical' by not subjecting Jesus Christ's temple to forcefully coerced medical treatments such as weekly PCR and/or rapid antigen test requirements."

A decision denying unemployment benefits infringes on an applicant's free-exercise rights under the First Amendment if it forces the employee to choose between their

sincerely held religious beliefs and their employment. *See Frazee*, 489 U.S. at 832; *see also Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981). Such an infringement can only be sustained upon demonstration that it is the least restrictive means to meet a compelling government interest. *Thomas*, 450 U.S. at 718. "Only beliefs rooted in religion are protected by the Free Exercise Clause," and the Supreme Court has recognized the "difficulty of distinguishing between religious and secular convictions and in determining whether a professed belief is sincerely held." *Frazee*, 489 U.S. at 833 (alteration omitted) (quotation omitted).

Although conduct based on an employee's sincerely held religious beliefs is constitutionally protected and cannot be the basis for a denial of unemployment benefits, this protection does not apply if the conduct is based on secular views instead of religious beliefs. *Id.* Whether employment misconduct is based on sincerely held religious beliefs is a fact issue. *See Thomas*, 450 U.S. at 716 ("The narrow function of a reviewing court in this context is to determine whether there was an appropriate finding that petitioner terminated his work because of an honest conviction that such work was forbidden by his religion."); *see also In re Welfare of T.K.*, 475 N.W.2d 88, 91 (Minn. App. 1991) (reviewing a district court finding that religious belief was sincerely held for clear error). The ULJ's factual findings should not be disturbed if the evidence in the record "reasonably tends to sustain those findings." *Schmidgall*, 644 N.W.2d at 804; *see also* Minn. Stat. § 268.105, subd. 7(d)(5).

Here, the ULJ conducted extensive questioning of relator, asking probing questions to determine whether he had sincerely held religious beliefs that prevented him from testing

for COVID-19. The ULJ found that relator lacked credibility because he provided inconsistent testimony and he struggled to explain his religious beliefs.

The ULJ noted that:

> [Relator] seemed to indicate that he could not take a test because it would contribute to the development of COVID-19 vaccines and that data collected from COVID-19 tests would be used to infringe on his privacy rights. . . . [Relator] then testified that if he could be certain taking a test would not contribute to further vaccine development, his religion would allow him to take a COVID-19 test. . . . [Relator] further explained that he still had freedom of choice to refuse taking a test under his religion. Then later in the hearing, [relator] claimed that he still could not take a COVID-19 test, even if it would not help develop vaccines, because the test would damage his DNA.

This finding is supported by the record documenting relator's answers to the ULJ's questions during the hearing.

Moreover, the ULJ found that relator lacked credibility because he "seemed to struggle to recall and explain what he could and could not do under his religion, and why." The ULJ further stated that, even though "a person may struggle with a religious belief and still have a sincerely held religious belief, this is not how [relator] presented." Ultimately, the ULJ found that "the credible evidence in the record does not support a finding that Daniel had a sincerely held religious belief that would have prevented him from undergoing COVID-19 testing." The record supports this finding, particularly because relator struggled to answer the ULJ's questions about whether he could be tested for the flu, strep, and throat cancer, but confirmed that he could seek medical treatment in some situations, such as a broken bone.

Because the evidence substantially supports this credibility determination, "we will not disturb the ULJ's factual findings." *Peterson*, 753 N.W.2d at 774; *see also Goede v. Astra Zeneca Pharms.*, ___ N.W.2d ___, ___, No. A22-1320, slip op. at 2 (Minn. App. June 12, 2023) ("This court will not disturb a factual finding that an applicant's vaccine refusal was based on purely secular reasons, and not sincerely held religious beliefs, if that finding is supported by substantial evidence."). We defer to the credibility determinations of the ULJ grounded in record evidence, regardless of the subject matter of the question presented. *See, e.g.*, *Icenhower v. Total Auto., Inc.*, 845 N.W.2d 849, 855-57 (Minn. App. 2014) (reviewing record evidence supporting a ULJ's finding related to dishonesty and mental illness that amounted to employment misconduct), *rev. denied* (Minn. July 15, 2014); *see also In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 223 (Minn. 2021) ("When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." (quotation omitted)).

Accordingly, the ULJ did not err by determining that relator is ineligible for unemployment benefits.

Affirmed.