STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1511

Gregory M. Reinert,
Relator,

vs.

Fairview Health Services,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed July 17, 2023
Affirmed
Bryan, Judge

Department of Employment and Economic Development
File No. 48524882-3

Gregory M. Reinert, St. Paul, Minnesota (pro se appellant)

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

Fairview Health Services, c/o Talx UCM Services, Inc., St. Louis, Missouri (respondent employer)

Considered and decided by Smith, Tracy M., Presiding Judge; Jesson, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this appeal from the denial of his request to receive unemployment benefits, relator argues that an unemployment law judge (ULJ) erred in determining that relator was discharged because of employment misconduct. Relator also challenges the ULJ's decision not to hold an additional hearing to consider his request for reconsideration. Because we conclude that substantial evidence supports the ULJ's findings and that the ULJ did not abuse its discretion in denying an additional hearing, we affirm.

FACTS

Relator Gregory M. Reinert applied for unemployment benefits after being discharged from his employment with respondent Fairview Health Services (Fairview). Respondent Minnesota Department of Employment and Economic Development (DEED) determined that Reinert was eligible for benefits because he was discharged for conduct that was not employment misconduct. Fairview appealed DEED's determination to a ULJ, who held an evidentiary hearing. The ULJ admitted testimony from Reinert and two representatives of Fairview—one of Reinert's supervisors, a human resources (HR) representative—as well as documentary exhibits.

According to this evidence, Reinert worked for Fairview as a financial services representative from 2017 to 2022. His job duties included processing and resolving claims, billing patients, and performing billing follow-up. Reinert worked from home and was scheduled to work between 8:00 a.m. and 4:30 p.m. According to the supervisor, Fairview had an electronic system that tracked when employees "document a note or do an activity."

The supervisor explained that this system generated "production report[s]" and that because employees were working from home, supervisors would "review for production goals and for time gaps" in order to "ensure everyone [was] meeting standards."

Fairview had three policies relevant to employee time entry and productivity. First, Fairview's recording-of-time policy stated: "All employees are expected to be ready to work at the start of their scheduled shift and are expected to work until the end of their scheduled shift." Second, Fairview's code of conduct provided that "[w]orkforce members must not create . . . any records that are intended to mislead or to conceal anything that is improper . . . includ[ing] . . . [m]isrepresenting time worked on employee time records." Finally, Fairview had a document called the "Fairview Commitments" that listed general policies and goals stated in the first person—for example, "I set standards and hold myself and others accountable to those standards." Reinert testified that he "was not aware of the specifics of the [recording-of-time] policy" but generally understood his employer's expectation that he perform work throughout his shift.

The supervisor testified that she monitored Reinert's productivity reports and noticed "multiple time gaps where there were no accounts worked." The supervisor stated that she and others met with Reinert on January 6, 2022, to discuss those time gaps, but "did not get an explanation as to why" he was not documenting work in the system for long stretches of time. The supervisor recounted telling Reinert that, while the length of an acceptable time gap depends on the work being done, "multiple . . . time gaps throughout the day should not be happening." Fairview also gave Reinert a written "notice of corrective action" on January 6, 2022. The notice stated that, despite a previous

conversation about productivity in September, Reinert had "large gaps in [his] time worked" over the previous three months. The notice listed examples of seventeen time gaps across five different days—each one lasting between forty-one minutes and over two hours. The notice stated that Reinert had violated the recording-of-time policy and the Fairview Commitments, and that going forward, Reinert needed to follow these policies, reduce his time gaps, and "if there [was] a reason on large time gaps[,] keep detailed notes." It further stated that "[t]hese expectations are immediate and must be sustained throughout [Reinert's] employment," and that "[f]ailure to do so may subject [Reinert] to corrective action or termination of employment."

Reinert refused to sign the January 6 notice of corrective action. He sent an email to the HR representative several days later complaining of "toxic management" and accusing the supervisor and another supervisor of "harassment," "discrimination," and "actively attempting to wrongfully terminate [his] employment with Fairview by means of intimidation and manipulation of fact." Reinert's email also included two reports, which he asserted showed that he achieved "normal productivity and quality" in October and November. Reinert also requested a temporary leave of absence pending the investigation of his complaint, but Fairview denied this request.

Fairview attempted to set up three additional meetings between Reinert and HR, but Reinert refused to attend the meetings. In addition, Reinert continued to have numerous time gaps in his reporting after January 6, 2022. On February 3, 2022, after Reinert's supervisors were unable to contact him to join a meeting, Fairview discharged Reinert.

Fairview provided a written notice of discharge that listed recent time gaps and "[l]ow productivity days" and stated an explanation for Reinert's discharge:

> You have recorded that you were working the duration of your scheduled shift for the dates listed above despite there being no work activity on the dates and durations listed above. This behavior is a misrepresentation of time and a violation of the Recording of Time Policy, Code of Conduct, and Fairview Commitments.

Reinert testified that, while he could not provide a specific explanation for what he was doing during the time gaps, he was "working the whole time." Reinert asserted that the time gaps could be attributed to tasks that did not register in Fairview's monitoring system, such as being on hold or researching billing information. He also stated that he received "mixed information" on whether he was supposed to document these types of events in the electronic system. Reinert described his work as "incredibly complicated," including a project that involved working through accounts from an old system. He explained that he was the only person working on that project and that this work was more complicated than that of his coworkers.

Reinert's testimony conflicts with the testimony provided by the supervisor. The supervisor testified that employees were expected to note all activities in the electronic system, and there would generally be no business reason that could explain Reinert's time gaps. She also opined "generally within 15-20 minutes there should be an activity," and that she could not understand how an employee could be working but "not have an account touched for 45 minutes to an hour." The supervisor did agree that employees performing Reinert's job sometimes encounter long phone calls or hold times, but she believed this

could not account for Reinert's time gaps because it was very uncommon, only happening "maybe once a month, once every couple of months." The supervisor also asserted that other employees had the same kinds of job duties as Reinert and they had not encountered the same time gap issues. The supervisor was asked whether she had been aware of Reinert's harassment complaint, and she responded: "Not for a while . . . I was not aware . . . well I take that back . . . [the HR representative] did reach out to me and have a meeting with me to go through his . . . complaints. I guess I didn't realize it was necessarily harassment."

The ULJ found that Fairview had a policy requiring employees to work from the start to the end of their shift and that Reinert was aware of Fairview's expectations under this policy. The ULJ also found that Reinert had numerous large gaps in his time worked that were "primarily due to intentionally not performing work." The ULJ determined that Reinert was discharged "because of his productivity time gaps and misrepresenting the hours he worked," and not for any other reason such as harassment or retaliation. The ULJ credited the supervisor's testimony as "detailed" and "reliable" and discounted Reinert's explanations of how he used his time as unreasonable. The ULJ determined that Reinert's conduct was employment misconduct because Fairview "had the right to reasonably expect that Reinert would perform work during his scheduled shifts" and Reinert seriously violated that expectation.

Reinert requested reconsideration arguing, among other things, that the supervisor lied during the hearing and that the ULJ erred in finding the supervisor credible. He submitted two new exhibits with his reconsideration request. The first was an email that

he sent to the supervisor on February 3 in which he forwarded the supervisor an email about his HR complaint, asserted that it was "highly inappropriate" for the supervisor to call his personal contact number, and asked her to correspond with him only via email. The second was an email that he sent to the supervisor, the HR representative, and another Fairview employee on January 26, which generally alleged "harassment and manipulation." Reinert asserted that these emails were proof that the supervisor "intentionally lied to [the ULJ] during her testimony" when she stated that she was not initially aware of Reinert's claims of harassment. The ULJ affirmed denying reconsideration, stating that "[n]one of the new evidence Reinert submits on reconsideration shows that [Fairview] provided likely false testimony."[1] Reinert petitioned for certiorari review.

DECISION

Reinert challenges the ULJ's determination that he committed employment misconduct as well as the ULJ's determination on reconsideration that Fairview did not likely provide false testimony. We address each argument in turn.

I. Determination of Employment Misconduct

Reinert first argues that the ULJ's misconduct determination is not supported by substantial evidence. We disagree because much of Reinert's argument invites us to

[1] Reinert also submitted a third exhibit consisting of an easier-to-read version of two emails from the original record. The ULJ determined that "[a] review of the clear exhibits does not require that the unemployment law judge order a new hearing."

disregard the ULJ's credibility determinations, to reweigh conflicting evidence, and because the ULJ's findings are otherwise supported by substantial evidence.

Under Minnesota law, "workers who are unemployed through no fault of their own" may receive "a temporary partial wage replacement." Minn. Stat. § 268.03 (2022). When an employer discharges an employee for employment misconduct, however, the employee is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4 (2022). The governing statute defines "employment misconduct" to mean "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). "[S]imple unsatisfactory conduct," however, does not amount to employment misconduct. *Id.*, subd. 6(b)(3) (2022). "Conduct that was a consequence of the applicant's inefficiency or inadvertence" and "conduct an average reasonable employee would have engaged in under the circumstances" are also not misconduct. *Id.*, subd. 6(b)(2), (4) (2022).

The determination of whether an employee was discharged because of employment misconduct presents a mixed question of law and fact. *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 27 (Minn. App. 2007). "Whether the employee committed a particular act is a question of fact," but "whether the act committed by the employee constitutes employment misconduct is a question of law." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court reviews the ULJ's factual findings in the light most favorable to the decision and will uphold those findings so long as they are supported by substantial evidence in the record. Minn. Stat. § 268.105, subd. 7(d) (2022); *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016).

Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Gonzalez Diaz v. Three Rivers Cmty. Action, Inc.*, 917 N.W.2d 813, 816 n.4 (Minn. App. 2018) (quotation and emphasis omitted).

We begin by noting that Reinert's argument in large part disputes the ULJ's credibility findings. For instance, Reinert asserts that the supervisor was "dishonest" and that her testimony was "questionable" and "false." The ULJ, however, credited the supervisor's testimony as "detailed" and "reliable." We have previously concluded that "[c]redibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus*, 721 N.W.2d at 345. While Reinert and the supervisor provided differing accounts of the events that led to Reinert's discharge, we defer to the ULJ's decision to credit the supervisor's testimony over Reinert's.

Reinert also argues that he did not violate Fairview's reasonable expectations because there is "no evidence that expectations were ever reasonably established" for productivity time gaps.[2] The ULJ found, however, that Fairview had a policy that employees were required to work the entirety of their scheduled shift and that Reinert was aware of that policy. The record supports these findings. Fairview's recording-of-time policy states that "employees are expected to be ready to work at the start of their scheduled

[2] To the extent that portions of Reinert's brief can be construed as raising a legal argument regarding the reasonableness of Fairview's recording-of-time policy, Reinert cites to no authority to support such an argument, and we therefore decline to address it. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (1971) ("An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.").

shift and are expected to work until the end of their scheduled shift." Fairview's code of conduct also prohibits employees from misrepresenting their time worked. The supervisor testified that when Reinert asked for clarification during their January 6 meeting, she told him that numerous time gaps "should not be happening." Fairview also provided Reinert with a written corrective action notice explaining that he had violated the recording-of-time policy and that he would be expected to achieve a "[r]eduction in time gaps." In short, the record contains ample evidence that Fairview informed Reinert of its expectations.

Reinert also argues that the ULJ erred in finding that he violated Fairview's reasonable expectations. We acknowledge that the record contains conflicting evidence regarding whether Reinert was working during the time gaps identified by Fairview's system. The ULJ, however, credited the supervisor's testimony over Reinert's and gave more weight to the evidence presented in support of employee misconduct than it did to contrary evidence.[3] We do not reweigh conflicting evidence and defer to the credibility determinations of the ULJ. *Bangtson v. Allina Med. Grp.*, 766 N.W.2d 328, 332 (Minn. App. 2009). The ULJ's finding that Reinert was not working during the time gaps is supported by substantial evidence.[4]

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[3] Reinert also suggests that the reason for his discharge was retaliation. However, the ULJ found that Reinert was discharged "because of his productivity time gaps and misrepresenting the hours he worked," and not "for any other reason." This finding is supported by substantial evidence, including the corrective action notice, the discharge notice, and the supervisor's credible testimony.

[4] To the extent that portions of Reinert's brief can be construed as making a legal argument that his conduct was "simple unsatisfactory conduct," *see* Minn. Stat. § 268.095, subd. 6(b)(3), rather than a "serious violation" of Fairview's standards, *id.*, subd. 6(a), we note that Reinert did not make that argument before the ULJ. Therefore, we need not address it. *Peterson v. Ne. Bank-Minneapolis*, 805 N.W.2d 878, 883 (Minn. App. 2011).

II. Denial of Request for Reconsideration

Reinert also argues that the ULJ erred by denying reconsideration. Upon a request for reconsideration, the ULJ "must order an additional hearing if a party shows that evidence which was not submitted at the hearing . . . would show that the evidence that was submitted at the hearing was likely false and that the likely false evidence had an effect on the outcome of the decision." Minn. Stat. § 268.105, subd. 2(c) (2022). "A reviewing court accords deference to a ULJ's decision not to hold an additional hearing and will reverse that decision only for an abuse of discretion." *Skarhus*, 721 N.W.2d at 345; *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007).

Reinert asserts that the emails he attached to his reconsideration request "prove[] that [the supervisor] knowingly gave false testimony during the hearing." The emails show that, on January 26 and February 3, 2022, Reinert directly communicated some of his allegations of harassment to the supervisor. Reinert asserts that, based on these emails, the supervisor lied when she testified that she had not initially realized that Reinert had made a harassment complaint against her. However, the supervisor merely testified that she knew about Reinert's complaints but was not immediately aware of the specific grounds. Reinert's new evidence does not appear to contradict the supervisor's hearing testimony. Thus, the ULJ did not abuse its discretion when it declined to order an additional hearing based on its determination that "[n]one of the new evidence . . . shows that [Fairview] provided likely false testimony."

Affirmed.