STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1136

Jennifer Moreland,
Relator,

vs.

Range Mental Health Center, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed April 19, 2011
Affirmed
Peterson, Judge

Department of Employment and Economic Development
File No. 24753779-3

Timothy Helmer Baland, Baland Law Office, Anoka, Minnesota (for relator)

Range Mental Health Center, Inc., St. Louis, Missouri (respondent)

Lee B. Nelson, Amy R. Lawler, Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Peterson, Presiding Judge; Toussaint, Judge; and Hudson, Judge.

U N P U B L I S H E D O P I N I O N

PETERSON, Judge

Relator challenges the determination by an unemployment-law judge (ULJ) that a driving-while-impaired (DWI) conviction constituted employment misconduct. Relator argues that (1) the ULJ abused his discretion in denying her request for an additional hearing on reconsideration because relator submitted evidence that would likely change the outcome of the decision and had good cause for not submitting the evidence at the initial hearing; (2) the ULJ erred in finding that relator's job required her to drive a motor vehicle; (3) lack of insurance coverage after a DWI conviction does not constitute employment misconduct, and, therefore, the DWI conviction did not "interfere with or adversely affect[] the employment" under Minn. Stat. § 268.095, subd. 6(c) (Supp. 2009); and (4) relator did not commit misconduct either because the conviction was a single incident or because she engaged in simple unsatisfactory conduct. We affirm.

FACTS

Respondent Range Mental Health Center, Inc., discharged relator Jennifer Moreland from employment after she was convicted of DWI. Relator filed a claim for unemployment benefits with respondent Department of Employment and Economic Development. A department adjudicator determined that relator was discharged for employment misconduct and was, therefore, ineligible for unemployment benefits. Relator appealed to a ULJ, who conducted an evidentiary hearing.

Relator was employed as a mental-health practitioner providing behavioral care to children in local schools. The employer's human-resources manager testified that the

position was "a driving position, per her position description." The human-resources manager testified that, during the school year, relator's position generally did not require driving but that, in the summer, relator was required to drive when bringing children on field trips. The program director clarified that, although relator would not be required to drive as often during the school year, she would be required to drive during the school year when making home visits. The program director testified that making home visits was a part of relator's day-to-day job responsibilities. Under the employer's insurance policy, a person with a DWI conviction was uninsurable for a five-year period.

By findings of fact and decision issued April 15, 2010, the ULJ found:

> During the school year [relator] would occasionally, but rarely, have to drive to a student's home. During the summer she would sometimes have to drive students to activities. Her job description specified that it was a driving position and required her to have a valid Minnesota driver's license. . . . The employer's insurance policy provides that an employee who has a DWI . . . is not insurable under the policy for five years even if the license is reinstated. [Relator] was discharged because she was in a driving position and was not insurable under the employer's policy.

The ULJ also found that driving was a normal part of relator's job duties. Based on these findings, the ULJ determined that relator was discharged for misconduct and was, therefore, ineligible for unemployment benefits.

Relator requested reconsideration. In support of the request, relator submitted a letter stating that she had communicated with several former coworkers who would confirm that driving was not an essential job requirement. The ULJ affirmed the April 15, 2010 decision. The ULJ explained, "The proposed additional evidence provides more

detail and the proposed additional witnesses would tend to corroborate [relator's] testimony, but the proposed evidence is not substantially different from the evidence already provided by [relator] and would not likely change the outcome of the decision." The ULJ also found that relator failed to show good cause why she could not have submitted the proposed additional evidence at the evidentiary hearing. This appeal followed.

D E C I S I O N

I.

A party is entitled to an additional evidentiary hearing upon a showing that evidence not submitted at the initial hearing "would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence." Minn. Stat. § 268.105, subd. 2(c) (Supp. 2009). This court will not reverse a ULJ's decision to deny an additional evidentiary hearing unless the decision constitutes an abuse of discretion. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006).

Relator offered evidence from several former coworkers confirming that driving was not an essential requirement of her job; employees never made home visits during the school year; and at least two employees must be present in a van with students at all times. Relator testified at the initial evidentiary hearing that, during the school year, she typically had families come to the school, rather than her going to somebody's house alone, and that, during the summer, at least two employees work together, so it would be possible for the other employee to do the driving. Because the additional evidence was cumulative to relator's testimony at the evidentiary hearing, the ULJ did not err in

determining that the proposed additional evidence was "not substantially different from the evidence already provided by [relator] and would not likely change the outcome of the decision." Relator also provided more information about the circumstances that resulted in her getting a DWI, but those circumstances were not relevant to the determination whether relator committed employment misconduct. *See* Minn. Stat. § 268.095, subd. 6(c) (stating that a DWI conviction "that interferes with or adversely affects the employment is employment misconduct").

Regarding good cause, relator argues that she "was not represented by an attorney at the evidentiary hearing, thought that her testimony would be sufficient to convince the ULJ that she was not in a driving position, and did not realize the complexities nor importance of presenting evidence on all contested issues at the evidentiary hearing." "Pro se litigants are generally held to the same standards as attorneys." *Heinsch v. Lot 27, Block 1 For's Beach*, 399 N.W.2d 107, 109 (Minn. App. 1987). A court will not modify ordinary rules and procedures because a pro se party lacks the skills and knowledge of an attorney. *Gruenhagen v. Larson*, 310 Minn. 454, 460, 246 N.W.2d 565, 569 (1976).

Because relator has failed to show that the proposed additional evidence would likely change the outcome or that she had good cause for not submitting the evidence at the initial evidentiary hearing, the ULJ did not abuse his discretion in denying an additional evidentiary hearing.

II.

This court reviews a ULJ's decision to determine whether the petitioner's substantial rights may have been prejudiced because the ULJ's findings, inferences, conclusion, or decision are affected by an error of law or unsupported by substantial evidence in view of the record as a whole. Minn. Stat. § 268.105, subd. 7(d) (2008). Substantial evidence means "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Minn. Ctr. For Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002). This court views factual findings in the light most favorable to the decision and defers to the ULJ's credibility determinations. *Skarhus*, 721 N.W.2d at 344.

Whether an employee committed misconduct is a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether the employee committed a particular act is a fact question, which we review in the light most favorable to the decision and will affirm if supported by substantial evidence. *Skarhus*, 721 N.W.2d at 344. Whether an employee's act constitutes employment misconduct is a question of law, which we review de novo. *Schmidgall*, 644 N.W.2d at 804.

A person who is discharged because of employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008).

> (a) Employment misconduct means any intentional, negligent, or indifferent conduct, on the job or off the job that displays clearly:

> (1) a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee; or
>
> (2) a substantial lack of concern for the employment.
>
> (b) Regardless of paragraph (a), the following is not employment misconduct: . . .
>
> (3) simple unsatisfactory conduct[.]
>
> . . . .
>
> (d) If the conduct for which the applicant was discharged involved only a single incident, that is an important fact that must be considered in deciding whether the conduct rises to the level of employment misconduct under paragraph (a).

Id., subd. 6 (Supp. 2009). A DWI conviction "that interferes with or adversely affects the employment is employment misconduct." *Id.*, subd. 6(c).

Relator challenges the ULJ's finding that driving was a normal part of her job duties. Both the human-resources manager and the program director testified that relator's job duties included driving. And relator testified:

> And, based on last summer, I, I did drive, but it could have been possible where it worked out to where I didn't do any of the driving, that the other mental health practitioner and the aide could have done the driving. And the reason that I came up with this is because there was somebody else who did that position and, and was able to do that [following a DWI conviction]. Now I know that, you know, when I brought that to their attention and they did, did say that, you know, it was too difficult and they would never do it again . . . .

The ULJ's finding is supported by substantial evidence, including relator's testimony.

Relator argues that the DWI conviction did not interfere with or adversely affect her employment. But relator would have been uninsurable under the employer's policy for five years following the conviction,[1] and her own testimony shows that the conviction would have interfered with her employment because the employer would have always had to make sure that relator was paired with another employee who could drive.

Relator argues that, if the conviction interfered with her employment, it was not misconduct because it was a single incident or simple unsatisfactory conduct. Both the single-incident provision and the simple-unsatisfactory-conduct exception expressly apply only to the general definition of misconduct set forth in paragraph (a) of section 268.095, subdivision 6. Minn. Stat. § 268.095, subd. 6(b)(3), (d). Paragraph (c) of section 268.095, subdivision 6, sets forth a separate, specific definition that applies to DWI convictions. Because relator committed misconduct under paragraph (c), neither the single-incident provision nor the simple-unsatisfactory-conduct exception applies to this case.

Relator has not shown that the ULJ's decision that relator was discharged for misconduct and, therefore, is ineligible for benefits was affected by an error of law or unsupported by substantial evidence in view of the record as a whole.

Affirmed.

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[1] Relator relies on *Schnaare v. Five G's Trucking, Inc.*, 400 N.W.2d 762 (Minn. App. 1987), to argue that being uninsurable is not employment misconduct. *Schnaare* relied on *Walseth v. L.B. Hartz Wholesale*, 399 N.W.2d 207, 209 (Minn. App. 1987). The part of the former misconduct definition that was applied in *Walseth* is not part of the current, statutory definition.