STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1199

Robert Anthony Dittel,
Relator,

vs.

Securitas Security Services USA, Inc.,
Respondent,

Department of Employment and
Economic Development,
Respondent.

Filed February 21, 2012
Affirmed
Crippen, Judge[*]

Department of Employment and Economic Development
File No. 27318311-3

Robert A. Dittel, Apple Valley, Minnesota (pro se relator)

Securitas Security Services USA, Inc., St. Louis, Missouri (respondent)

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

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Crippen, Judge.

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

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

CRIPPEN, Judge

Relator challenges an unemployment-law judge's (ULJ) decision that he is ineligible for unemployment benefits. We affirm, concluding that the record evidence sustains the ULJ's findings that relator's conduct was a violation of both known written policies of his employer and standards of behavior the employer had the right to reasonably expect of relator.

FACTS

Relator Robert Dittel began his employment with respondent Securitas Security Services in February 2010, as a part-time security officer. The Securitas employee handbook provides that "[a]ctions, words, jokes or comments based on an individual's religion will not be tolerated." The handbook also prohibits employees from distributing or posting literature during work time or in work areas.

During his employment, relator distributed documents to his coworkers featuring religious and political commentary, including a fake trillion-dollar bill discussing religion and a business card that deplored abortion and interest groups with this "agenda." In January 2011, relator anonymously placed a nine-page document, claiming the teaching of violence by a religious group, for the attention of his supervisor. On February 11, relator was discharged from his employment for violation of the company policy.

Respondent Minnesota Department of Employment and Economic Development (DEED) initially determined that relator was eligible for unemployment benefits because, while he had violated the policy, he "had not received any prior warnings, reprimands or

coaching informing [him] that this is not proper conduct in the workplace." Securitas appealed the determination and the ULJ decided, following a hearing, that relator had been discharged for employment misconduct and was therefore ineligible for unemployment benefits. The ULJ found that relator's distributions were knowingly offensive and that relator "knew or should have known" that his conduct was both prohibited and inappropriate, displaying "a serious violation of the standards of behavior (Securitas) had the right to reasonably expect of him." The ULJ affirmed on reconsideration and this certiorari appeal followed.

D E C I S I O N

An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). Employment misconduct means any intentional, negligent, or indifferent conduct that clearly displays either a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee or a substantial lack of concern for the employment. *Id.*, subd. 6(a) (2010).

Our review of a ULJ's eligibility decision is governed by Minn. Stat. § 268.105, subd. 7(d) (2010), which includes grounds for correction if the ULJ's findings are unsupported by substantial evidence or are otherwise affected by an error of law. The question of whether an employee committed employment 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 question of fact. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). This court reviews the ULJ's

factual findings "in the light most favorable to the decision" and defers to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But whether a particular act constitutes employment misconduct is a question of law, which we review de novo. *Scheunemann*, 562 N.W.2d at 34.

Relator's overriding argument is that he did not understand that his actions were in violation of the company policies because they were allegedly not explained in sufficient detail; he was not given warnings before he was discharged; and other Securitas employees allegedly disregarded the policies and were not disciplined. But relator does not disclaim knowledge of policies listed in the employee handbook, and he does not dispute the ULJ's finding that he knew or should have known that he was expected to comply with the policies. He also does not challenge the ULJ's finding that he knew the material would offend others. There is no merit in relator's argument that the policies were unclear with regard to the inflammatory materials he distributed.

An employee's failure to abide by his employer's reasonable policies is employment misconduct, resulting in a disqualification from unemployment benefits. *Schmidgall*, 644 N.W.2d at 804. And because Securitas had the right to expect that relator would not distribute offensive materials at the workplace, the ULJ did not err by concluding that relator had been discharged for employment misconduct.

Insofar as relator is suggesting that Securitas selectively enforces its policies, the claim is unavailing. *See Dean v. Allied Aviation Fueling Co.*, 381 N.W.2d 80, 83 (Minn. App. 1986) ("Violation of an employer's rules by other employees is not a valid defense to a claim of misconduct."). And the employer's failure to follow its progressive-

discipline policy is similarly irrelevant to the ULJ's determination. *Stagg v. Vintage Place, Inc.*, 796 N.W.2d 312, 315-7 (Minn. 2011) (employer's failure to follow handbook, even if relevant to a breach-of-contract claim, not the focus of a dispute regarding the employee's eligibility for unemployment benefits).

Affirmed.