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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-228**

Joanne Nigbor,
Relator,

vs.

Wells Fargo Bank, N.A.,
Respondent,

Department of Employment and
Economic Development,
Respondent.

**Filed October 31, 2011
Affirmed
Klaphake, Judge**

Department of Employment and Economic Development
File No. 25721113-3

Ann E. Juergens, c/o William Mitchell College, St. Paul, Minnesota (for relator)

Wells Fargo Bank, N.A., c/o Barnett Associates, Inc., Garden City, New York
(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 Stauber, Presiding Judge; Klaphake, Judge; and
Wright, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Relator Joanne Nigbor challenges a decision by an unemployment law judge (ULJ) that she was ineligible to receive unemployment benefits after being discharged from her personal banker position at Wells Fargo Bank, N.A. in Shoreview (Wells Fargo). Relator brought her dog to work on at least three occasions in 2010, and continued to do so after being directed to leave the dog at home. She claims that (1) she reasonably believed that she had permission to bring her dog to work or made a good faith error in judgment when she did so; and (2) the ULJ relied on unlawful procedure by failing to permit her to develop the record and by repeatedly rescheduling the evidentiary hearing, which resulted in relator's witness being unable to personally appear at the hearing. Because the record evidence supports the ULJ's decision that relator's actions constituted employment misconduct rather than a good-faith error in judgment and because the ULJ did not rely on unlawful procedure during the hearing process, we affirm.

DECISION

In an unemployment compensation appeal, this court may affirm the decision of the ULJ, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator were prejudiced. Minn. Stat. § 268.105, subd. 7(d) (2010). “[T]he appellate court is to review the ULJ’s factual findings in the light most favorable to the decision and should not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them.” *Stagg v. Vintage Place*

Inc., 796 N.W.2d 312, 315 (Minn. 2011) (quotation and citation omitted). “Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). It is a question of fact whether the employee committed a particular act. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). It is a question of law whether a particular act constitutes misconduct, and we review this question de novo on appeal. *Stagg*, 796 N.W.2d at 315.

An employee discharged for misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). Employment misconduct is defined as “any intentional, negligent, or indifferent conduct . . . 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.” *Id.*, subd. 6(a) (2010). Among the exceptions to this definition is the employee’s “good faith error[] in judgment if judgment was required.” *Id.*, subd. 6(b)(6) (2010). An employee’s insubordinate behavior can constitute employment misconduct. *Snodgrass v. Oxford Props., Inc.*, 354 N.W.2d 79, 80 (Minn. App. 1984).

Relator claims that the ULJ erred in concluding that she committed misconduct by bringing her dog to work on July 8, 2010, the incident that prompted her discharge. She argues that she reasonably believed that the chain-of-command policy required her bank manager, Amy Grose, to advise her about any bank policies that prohibited her from bringing a dog to work or changes in her perceived permission from Grose to bring her

dog to work. Relator also argues that she made a good-faith error in judgment when she brought her dog to work on July 8, 2010.

These arguments rely on facts that are contrary to key facts found by the ULJ, however. The ULJ found that (1) relator had only one-time permission to bring her dog to work on February 8, 2010; (2) Wells Fargo district manager, Jeff Fredrickson, discovered the dog at work later in February 2010 and directed Grose to tell relator that she could not bring the dog to work, which Grose did; (3) on May 27, 2010, Fredrickson discovered relator's dog at work, rejected relator's claim that nobody told her she could not bring the dog to work, directed relator to bring the dog home, and told her that she could not bring the dog to work; and (4) on July 8, 2010, relator brought her dog to work, and Grose ordered relator to take the dog home immediately.

In making these factual findings, the ULJ particularly credited the testimony of Fredrickson and Grose because it found that “[t]he employer’s witnesses were consistent and more detailed.” *See* Minn. Stat. § 268.105, subd. 1(c) (2010) (requiring ULJ to set forth reason for crediting witness testimony when the testimony “has a significant effect on the outcome of a decision”). The ULJ also found that relator’s “explanation that she did not follow Fredrickson’s direction because Fredrickson is not her supervisor and the agreement [to bring the dog to work] was between Grose and herself is not reasonable.”

“Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus*, 721 N.W.2d at 345. The record here included substantial evidence to support the ULJ’s findings and ultimate decision. *See Schmidgall*, 644 N.W.2d at 804 (viewing ULJ’s factual findings in the light most favorable to the decision

and requiring appellate court to defer to ULJ decision if the evidence reasonably sustains the ULJ's findings). Relying on the facts found by the ULJ, relator refused to abide by her employer's reasonable work policy that prohibited her from bringing her dog to work, and she continued to bring her dog to work after receiving repeated warnings not to do so. These actions constituted employment misconduct and did not demonstrate a good-faith error. *See, e.g., Schmidgall*, 644 N.W.2d at 805-06 (holding employee's refusal to abide by employer's reasonable policy constituted employment misconduct); *McGowan v. Executive Express Transp. Enters., Inc.*, 420 N.W.2d 592, 596 (Minn. 1988) (same); *Bibeau v. Resistance Tech., Inc.*, 411 N.W.2d 29, 32 (Minn. App. 1987) (upholding decision that employee who deliberately chose to disobey her employer's "stupid" instructions committed employment misconduct); *Daniels v. Gnan Trucking*, 352 N.W.2d 815, 816 (Minn. App. 1984) (upholding decision that employee's refusal to unload a truck was "a deliberate act of insubordination" that constituted employment misconduct).

Relator next argues that the ULJ relied on unlawful procedure by failing to fully develop the record and "prolonged the case to the extent that a third party witness was no longer available for live testimony." Relator claims that the ULJ did not permit her to "speak about her understanding of Wells Fargo policy or how she viewed her encounters with Mr. Fredrickson and Ms. Grose." This claim is not supported by relator's testimony at the evidentiary hearing. Her testimony encompassed 29 pages and includes many references to her beliefs or state of mind about whether she had permission to bring her dog to work, the effect of her conversations with her managers, and their authority over her conduct.

Relator particularly relies on two instances that she claims demonstrate the ULJ's failure to permit her to fully develop the record. In the first, she referred to her interaction with Fredrickson by stating, "When Jeff confronted me and used me as a punching bag on May 27th. . . ," at which point Wells Fargo's attorney objected, and the ULJ directed relator to "refrain from any negative comments" and asked her to "just stick to the facts." Later in relator's testimony, her attorney asked whether Fredrickson had "ever had an exchange with you like this before [their interaction on May 27]," Wells Fargo's attorney objected on relevancy grounds, and the ULJ sustained the objection, stating, "Well, Ms. Nigbor's already testified as to what her feelings were and her state of mind where in fact she even used the word punching bag. So I think we can move on." These examples do not demonstrate that relator was unable to explain why she believed she could bring her dog to work. As a whole, relator's testimony was fully developed in accordance with the law. *See* Minn. Stat. § 268.105, subd. 1(b) (2010) (stating that ULJ has the duty to "ensure that all relevant facts are clearly and fully developed" in the evidentiary hearing).

Finally, relator argues that the ULJ undermined development of the record by rescheduling the hearing three times, which resulted in relator's witness, Michael Steindel, being unable to testify in person. The record does not support relator's claim. Instead, it shows that relator's attorney informed the ULJ that Steindel might not be able to appear in person at the November 24, 2010 hearing, but "he has given me his phone number to call and he might be able to give live testimony over the phone." Relator's attorney suggested to the ULJ that the ULJ might "prefer to have the affidavit submitted

as testimony” and that “my client would be okay with just submitting the affidavit as testimony.” Given that relator’s attorney acquiesced in offering Steindel’s testimony in affidavit form, the record does not show that the ULJ prohibited the development of the record.

Affirmed.