

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-783**

Linda Miller,
Relator,

vs.

American Comm Newspapers II, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed December 5, 2011

Affirmed

Larkin, Judge

Department of Employment and Economic Development
File No. 25919377-5

Linda Miller, Crystal, Minnesota (pro se relator)

American Comm Newspapers II, LLC, Eden Prairie, Minnesota (respondent)

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

Considered and decided by Larkin, Presiding Judge; Klaphake, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Relator challenges an unemployment-law judge's (ULJ) determination that she is ineligible for unemployment benefits because she was discharged for employment misconduct, arguing that she did not engage in employment misconduct and that she was discharged due to a medical condition. We affirm.

FACTS

Relator Linda Miller worked as a classified sales representative for Sun Newspapers¹ from October 2000 through August 17, 2010. Sun Newspapers required that its customers approve all advertising and that either the advertising director or advertising manager approve all advertising rates. Before May 2010, relator received numerous written warnings for crediting customer accounts, offering discounted rates, and submitting advertisements without the required prior approval. Relator also changed the size of advertisements and offered customers additional run time in the newspaper without prior approval, to satisfy customer complaints. At a meeting in May 2010, Sun Newspapers's policy was clarified and relator learned that she needed to obtain prior managerial approval before adjusting the size and frequency of advertisements. But relator continued to change the frequency of advertisements, adjust the size of advertisements, and offer special rates to customers without first obtaining managerial

¹ The record indicates that respondent American Community Newspapers II, LLC, does business as Sun Newspapers.

approval. Relator was discharged from Sun Newspapers on August 17, 2010 for running advertising without proper authorizations.

Relator applied for unemployment benefits with respondent Department of Employment and Economic Development (DEED). She was initially deemed eligible to receive unemployment benefits. Sun Newspapers appealed the eligibility determination, and a ULJ held an evidentiary hearing in October 2010. At the hearing, relator testified that before the May 2010 meeting, she believed she had the authority to add lines to an advertisement and to expand an advertisement's run time to address customer concerns without obtaining managerial approval. She further testified that after the meeting, she did not change any advertisement's size or run time without prior approval.

The ULJ determined that relator had not committed employment misconduct and that she was therefore eligible to receive unemployment benefits. The ULJ concluded that relator's testimony that she did not engage in the prohibited practices after the May 2010 meeting was credible and that the preponderance of the evidence showed that she "was making reasonable efforts to properly perform her job duties." The ULJ also concluded that relator's actions were not intentional or negligent, but instead were "due to inadvertence or good faith errors in judgment."

Following the eligibility determination, Sun Newspapers requested reconsideration on the ground that it could provide evidence showing that relator continued to offer adjustments to advertisements without prior approval after the May 2010 meeting. The ULJ concluded that Sun Newspapers had shown that an additional evidentiary hearing was necessary because the new evidence "would show that the evidence that was

submitted [at the first hearing] was likely false and that the likely false evidence had an effect on the outcome of the decision.” The ULJ set aside its original findings of fact and decision and ordered an additional evidentiary hearing.

Following the second hearing, the ULJ determined that relator was discharged because of employment misconduct and was therefore ineligible for benefits. The ULJ found that relator “initiated advertising for the newspaper that had not been approved by the customer or changed an advertisement size or run time without getting the change approved by [the appropriate people], in violation of Sun Newspapers’ policy.” The ULJ concluded that “[b]y repeatedly failing to get the proper authorization, [relator]’s behavior was a serious violation of the standards of behavior Sun Newspapers had a right to reasonably expect of her and showed a substantial lack of concern for the employment.” The ULJ also considered relator’s claim that she was terminated due to an injury, but concluded that the evidence did not support this theory.

Relator requested reconsideration, arguing that the ULJ improperly permitted Sun Newspapers to submit new evidence at the second hearing and that she should be entitled to present new witness testimony. The ULJ affirmed her decision, reasoning that the decision to order the second evidentiary hearing was proper and concluding that relator did not show good cause for failing to offer the proposed witness testimony at the prior hearing. This certiorari appeal follows.

D E C I S I O N

Our review of a ULJ’s eligibility determination is governed by Minn. Stat. § 268.105, subd. 7(d) (2010), which provides, in relevant part:

The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:

- ...
- (4) affected by [an] error of law; [or]
- (5) unsupported by substantial evidence in view of the entire record as submitted[.]

On appeal, relator fails to articulate a specific legal argument or basis for reversal. She does not expressly assign error to any of the ULJ's findings or conclusions, and she does not raise the arguments that she made in her motion for reconsideration.² Instead, she generally argues that she is entitled to unemployment benefits and describes her employment conditions at Sun Newspapers. But on an appeal from a ULJ's determination of eligibility, the relator is not entitled to a trial de novo. *See id.* Moreover, issues not briefed on appeal are waived. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982). At best, relator's appeal may be construed as a general challenge to the ULJ's findings of fact and conclusions of law. We treat it as such.

An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). Employment

² We nonetheless observe that the ULJ's decision to order the second evidentiary hearing was proper, as was the ULJ's conclusion that relator did not show good cause for failing to offer her proposed witness testimony at the prior hearing. *See* Minn. Stat. § 268.105, subd. 2(c) (2010) ("The unemployment law judge must order an additional evidentiary hearing if an involved party shows that evidence which was not submitted at the evidentiary hearing: (1) would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence; or (2) would show that the evidence that was submitted at the evidentiary hearing was likely false and that the likely false evidence had an effect on the outcome of the decision).

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.” *Id.*, subd. 6(a).

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 a particular act constitutes employment misconduct is a question of law, which an appellate court reviews de novo. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). Whether the employee committed the particular act, however, is a question of fact. *Id.* 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).

Relator contends that she did not engage in employment misconduct, arguing that she did not violate company policies. The ULJ found that relator resized advertisements, offered discounts to customers, and ran advertisements longer than authorized in order to resolve customer complaints without the required managerial approval. The ULJ also found that in May 2010, relator was informed that these practices were against company policy and that in the future, she would need to obtain managerial approval before offering these services to customers. Finally, the ULJ found that after being told the proper protocol, relator continued to write off customer accounts and offer discounts without receiving prior approval.

These factual findings are supported by substantial evidence in the record, including the testimony of Pamela Miller, Classified Ad Manager. Miller submitted documentation demonstrating that relator made unapproved changes to advertisements and run frequencies after she was told that prior approval was required. Relator acknowledged that prior approval was required but contended that she had obtained the approval verbally. This was contrary to Miller's testimony, who stated that relator had not received prior approval for her changes. The ULJ specifically found the testimony offered by Sun Newspapers to be more credible "because the witnesses' testimony was consistent with each other and with the documents submitted in the record." *See* Minn. Stat. § 268.105, subd. 1(c) (2010) (requiring the ULJ to "set out the reason for crediting or discrediting" testimony when the credibility of that witness "has a significant effect on the outcome of a decision"). Viewing the record in a light most favorable to the ULJ's decision, substantial evidence shows that relator violated her employer's policies by making changes to advertisements and customer accounts without the required preapproval by her supervisors.

Relator does not argue that these actions do not constitute disqualifying misconduct. Such an argument would be futile because an employee's failure to abide by reasonable policies and requests is disqualifying misconduct. *Schmidgall*, 644 N.W.2d at 804. Sun Newspapers's policies requiring prior customer and managerial approval were reasonable because they related to the costs and profits of the business, as well as customer satisfaction. For example, the ULJ found that after the May 2010 meeting, relator continued to run advertisements without the proper customer authorization,

resulting in at least five customer complaints. Because of these complaints, Sun Newspapers had to credit the cost of the unauthorized advertisements to the customers' accounts, resulting in lost revenue.

Relator also contends she was terminated from her employment because she needed time off from work due to a medical condition. The ULJ considered relator's theory and concluded that "the only evidence to support this allegation is the fact that she had taken a medical leave and was discharged. The evidence shows that the discharge was related to her failure to obtain proper authorization for advertising and not because of her medical leave." There is nothing in the record to substantiate relator's claim; whereas the record provides substantial support for the ULJ's determination that relator was discharged for misconduct and not because of a medical condition.

Because substantial evidence supports the ULJ's findings of fact and because the findings support the legal conclusion that relator was discharged for employment misconduct, we affirm.

Affirmed.

Dated:

Judge Michelle A. Larkin