STATE OF MINNESOTA
IN COURT OF APPEALS
A11-961

Ahmed S. Ahmed-Bani,
Relator,

vs.

Volunteers of America of Minnesota, Corp.,
Respondent,

Department of Employment and Economic Development,
Respondent

Filed April 23, 2012
Affirmed
Peterson, Judge

Department of Employment and Economic Development
File No. 26740977-3

James Carl Duchon, Edina, Minnesota (for relator)

Malcolm Peter Terry, Messerli & Kramer, P.A., Minneapolis, Minnesota (for respondent Volunteers of America of Minnesota)

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

Considered and decided by Peterson, Presiding Judge; Larkin, Judge; and Crippen, Judge.[*]

[*] 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

PETERSON, Judge

This appeal is from an unemployment-law judge's decision that relator is ineligible to receive unemployment benefits because he was discharged for employment misconduct. We affirm.

FACTS

Relator Ahmed Ahmed-Bani was employed by respondent Volunteers of America of Minnesota Corp. (VOA) from 2002 through December 10, 2010. When relator was discharged, his position was manager of a community center. His job duties included managing the center's day-to-day operations, planning activities, and supervising senior aides.

The senior aides that relator supervised were employed and paid by Jewish Family and Children's Services (JFCS), which sponsored a federally funded employment-training program. JFCS placed the senior aides at VOA to get work experience, and the senior aides were required to fill out time sheets that showed the time that they arrived at work and the time that they left. Relator was required to review the time sheets and approve them before submitting them to JFCS. Hours worked were required to be recorded for purposes of JFCS's federal grant. In June 2010, relator received training on JFCS's requirements for managing the federal grant program and signing off on senior-aides' time sheets and also signed an agreement acknowledging that compliance with the terms of the federal grant program was required.

Relator's employment was terminated for approving a time sheet of a senior aide that correctly stated the number of hours worked but not the actual hours worked. The time sheet showed that the aide worked from 9:00 a.m. until 1:00 p.m. on November 1-5, 2010. Relator instructed the aide to work different hours on two of those days to accommodate relator's schedule, but relator did not comply with JFCS's requirement that its approval be obtained before changing the aide's schedule. A JFCS employee visited VOA twice during the week of November 1-5 and saw that the aide was not there during times reported on his time sheet. As a result of the discrepancy, JFCS told VOA that it would end its partnership with VOA if VOA allowed relator to continue supervising senior aides. Relator admitted to VOA that the aide's time sheet did not show the actual hours the aide had worked, and VOA discharged relator for falsifying the time sheet.

Relator filed a claim for unemployment benefits with respondent Department of Employment and Economic Development. A department adjudicator determined that relator had not committed employment misconduct and, therefore, was eligible for unemployment benefits. VOA appealed to an unemployment-law judge (ULJ). Following an evidentiary hearing, the ULJ determined that relator was discharged for employment misconduct and, therefore, was ineligible for unemployment benefits. Relator filed a request for reconsideration, and the ULJ issued an order affirming the findings of fact and decision. This certiorari appeal followed.

D E C I S I O N

I.

This court reviews a ULJ's decision to determine whether substantial rights were prejudiced because the findings, inferences, conclusion, or decision are unsupported by substantial evidence in view of the record as a whole or affected by an error of law. Minn. Stat. § 268.105, subd. 7(d) (2010). This court views 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).

A person who is discharged because of employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). Whether an employee committed employment misconduct is a mixed question of fact and law. *Stagg v. Vintage Place*, 796 N.W.2d 312, 315 (Minn. 2010). 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. *Stagg*, 796 N.W.2d at 315.

"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." Minn. Stat. § 268.095, subd. 6(a). Employment misconduct does not include inefficiency or inadvertence, simple

unsatisfactory conduct, poor performance because of inability or incapacity, or good-faith errors in judgment. *Id.*, subd. 6(b).

1. Relator argues that the ULJ erred in finding that "[JFCS] requires VOA to make sure that its employees sign an agreement verifying that they will adhere scrupulously to the terms of the federal grant" and that "[relator] signed such an agreement." Relator argues that evidence presented by VOA showed only that VOA signed a host agency agreement to use senior aides in a manner consistent with program requirements and did not show that relator signed or even saw an agreement verifying that he would adhere to the terms of the federal grant program. But relator's supervisor testified that, in June 2010, relator met with someone from JFCS for training on managing the federal grant program and also received training on how to sign off on senior-aides' time sheets and signed an agreement acknowledging that compliance with the terms of the federal grant program was required. The supervisor's testimony is substantial evidence that supports the findings that VOA employees are required to sign an agreement verifying that they will adhere to the terms of the federal grant program and that relator signed such an agreement.

2. Relator argues that the ULJ erred in finding that the aide's hours were changed from morning to later in the afternoon because the evidence showed that relator had the aide come in earlier. Although relator testified that he had the aide come in earlier, relator's supervisor testified that relator told her that he changed the aide's hours to later in the afternoon. Consequently, there is evidence that supports the ULJ's finding of fact. But even if the ULJ erred in finding that the aide worked later rather than coming in

earlier, the error did not prejudice relator's substantial rights because relator was discharged for signing off on a time sheet that did not show the actual hours the aide worked. It is irrelevant whether the aide came in earlier or stayed later than the hours reported on the time sheet because, either way, the time sheet that relator signed was incorrect.

3. Relator argues that correctly finding the actual time that the senior aide worked was necessary to show whether the time sheet was accurate. But relator admitted that the time sheet did not accurately reflect the hours worked. Relator also argues that correctly finding the actual time worked was necessary to show whether the JFCS employee "was visiting VOA during the exact times that [the aide] was reported to be working." But it was not necessary to know when the aide actually worked in order to know the exact times he was reported to be working. The time sheet showed the times the aide was reported to be working, and relator's supervisor's testimony established that the JFCS employee was at VOA during the times reported on the time sheet. Also, when completing the Unemployment Insurance Request for Information form submitted to DEED, relator stated that "the employee whose time sheet is in question had requested a change in his work hours" and, as the employee's supervisor, relator "approved this change based on the needs of the facility."

Relator's testimony indicates that he understood the requirements that a time sheet show the actual hours worked by a senior aide and that schedule changes be approved by JFCS, but he did not comply with those requirements because he had difficulty working with the JFCS senior-aide coordinator who approved schedule changes. As a general

rule, refusing to abide by an employer's reasonable policies and requests is disqualifying misconduct. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). "[A]n employee's decision to violate knowingly a reasonable policy of the employer is misconduct." *Id.* at 806. Although there was no evidence that the senior aide did not work for the number of hours reported on his time sheet, the additional requirement that the actual hours worked must be reported on the time sheet was reasonable because it provided a mechanism for JFCS to determine whether the senior aides were following their work schedules.

II.

1. Relator argues that, as a party who was not represented by counsel at the hearing, the ULJ did not give him sufficient help at the hearing. The ULJ "should assist unrepresented parties in the presentation of evidence." Minn. R. 3310.2921 (2011). In the memorandum that accompanied the ULJ's order on reconsideration, the ULJ noted that relator actively participated in the hearing, including questioning the other party, and did not request an attorney or an interpreter. The record does not demonstrate that the ULJ had a reason to know that relator needed assistance in presenting evidence.

2. Relator argues that the ULJ should have elicited evidence on "the exact hours [the senior aide] worked, the exact time that the [JFCS] agent was visiting VOA and the actual training [relator] had or didn't have [on signing off on time sheets] . . . ." Relator testified about all of these issues. Furthermore, it is undisputed that the hours the aide worked were not accurately reported on his time sheet, and relator's

own testimony indicates that he understood that he was required to obtain approval from JFCS before changing a senior-aide's schedule.

III.

When deciding a request for reconsideration, the ULJ may not consider evidence that was not submitted at the evidentiary hearing except to determine whether to order an additional evidentiary hearing. Minn. Stat. § 268.105, subd. 2(c) (2010). An additional evidentiary hearing must be ordered if a party shows that the new evidence either would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence, or it would show that the evidence previously submitted was likely false and affected the decision. *Id.*

With his request for reconsideration, relator submitted evidence that VOA permitted flexibility in filling out time sheets and that changes in aides' schedules were common. In a memorandum addressing relator's request for reconsideration, the ULJ stated:

> The [ULJ] based her findings of fact and credibility on admissions against interest that [relator] made to his supervisor . . . when she questioned him as to what had transpired; admissions against interest he made on the Unemployment Insurance Request for Information he completed, which was received as exhibit 4; and the admissions against interest he made at the hearing. After carefully reviewing the information that [relator] included in his request for reconsideration, the [ULJ] concludes that [relator] did not include any information with his request for reconsideration that was sufficient to support a finding that the [ULJ's] decision in this matter contained material errors of fact or a misapplication of the law or that an additional evidentiary hearing is warranted.

Even if VOA allowed flexibility in changing senior-aides' schedules, the evidence that relator submitted with his request for reconsideration does not indicate that relator could change a schedule without obtaining approval from JFCS and without accurately reporting the change in work hours on a time sheet. Consequently, it is not likely that the new evidence would change the outcome of the ULJ's initial decision.

Relator also argues that the senior aide may have been present when the JFCS employee visited VOA or may have been gone doing a legitimate work errand. But these facts would not change the outcome because the evidence shows that the aide's time sheet did not show the actual hours worked.

Affirmed.