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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0337**

Troy M. Cahoon,
Relator,

vs.

J Graff and Associates, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed October 15, 2012
Affirmed
Larkin, Judge**

Department of Employment and Economic Development
File No. 28706482-3

Troy M. Cahoon, Bethel, Minnesota (pro se relator)

J Graff & Associates, Inc., Rush City, Minnesota (respondent)

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

Considered and decided by Larkin, Presiding Judge; Schellhas, Judge; and Collins,
Judge.*

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

UNPUBLISHED OPINION

LARKIN, Judge

Pro se relator challenges the decision of an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he was discharged for employment misconduct. We affirm.

DECISION

Relator Troy M. Cahoon was employed as a sales associate for respondent J Graff & Associates from April 5, 2010, until his discharge on October 18, 2011. J Graff & Associates, a remanufacturer and retailer of gas-station service equipment, is the employer of record for unemployment-insurance purposes. Jason Graff is the managing employer who generally directed Cahoon's work. Cahoon's job responsibilities included making 50 to 60 sales calls daily to existing or potential customers. In the months leading up to Cahoon's discharge, Jason Graff verbally warned Cahoon, and twice e-mailed Cahoon, about his low call volume. After each warning, Cahoon's call volume briefly improved but would then regress. Other employees complained to Jason Graff that Cahoon wasted time talking to them about nonwork-related issues. Jason Graff discharged Cahoon on October 18, 2011 for low call volume and for wasting work time.

Cahoon applied for unemployment benefits and established a benefit account with respondent Minnesota Department of Employment and Economic Development (DEED). A DEED adjudicator determined that Cahoon was eligible for benefits, and J Graff & Associates appealed that determination. After an evidentiary hearing in which Cahoon and the employer participated, a ULJ made detailed findings of fact and express

credibility determinations and concluded that the evidence “supports that Cahoon acted in serious violation of the standards of behavior that J Graff & Associates had a right to reasonably expect of him.” The ULJ therefore determined that Cahoon was discharged for employment misconduct and that he is ineligible for benefits. Cahoon filed a request for reconsideration, and the ULJ affirmed her determination. Cahoon appeals by writ of certiorari.

I.

When reviewing the decision of a ULJ, we may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are “(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious.” Minn. Stat. § 268.105, subd. 7(d) (2010). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Minneapolis Van & Warehouse Co. v. St. Paul Terminal Warehouse Co.*, 288 Minn. 294, 299, 180 N.W.2d 175, 178 (1970).

Cahoon argues that “[he] lost [his] job through no fault of [his] own” and that “[t]here was never a time when [he] acted out in a negligent or indifferent manner.” We construe his argument as a challenge to the ULJ’s decision that he was discharged for employment misconduct. 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, 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.* at subd. 6(a) (2010). The misconduct definitions set out in the statute are exclusive and “no other definition applies.” *Id.* at subd. 6(e).

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).

Cahoon primarily claims that his discharge was pretextual. Cahoon asserts that he was fired in retaliation for reporting that another person in management had been sleeping on the job. If an applicant for benefits claims that the stated reason for discharge was pretextual, the ULJ must allow the applicant to present evidence on that claim. *Scheunemann*, 562 N.W.2d at 34. “The [ULJ] is then obligated to weigh the evidence, determine credibility, and make a determination on the reasons for the discharge.” *Id.* If the reason for discharge is determined to be pretextual, the relator is entitled to unemployment benefits. *See id.* The ULJ considered Cahoon’s pretextual-discharge claim and rejected it, reasoning that Jason Graff’s testimony was “more credible than

Cahoon's testimony, because it was less self-serving and more likely. Graff had no incentive to let Cahoon go for any reason other than Cahoon not performing his job."

Although Cahoon argues that he was more credible than Jason Graff, this court does not reweigh the evidence or reassess witness credibility determinations on appeal. *See Skarhus*, 721 N.W.2d at 344. The ULJ provided the parties with ample opportunity to present evidence. In the end, the ULJ concluded that the evidence showed that Cahoon did not meet his call-volume quota. This finding was based on an express determination that Jason Graff's testimony was more credible than Cahoon's testimony, and the ULJ explained the reasons for her credibility determination. *See* Minn. Stat. § 268.105, subd. 1(c) (2010) ("When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony."). We discern no reversible error in the ULJ's resolution of Cahoon's pretextual-discharge claim.

Cahoon also raises a number of complaints about his working environment and conditions. He argues that he did not receive commissions that he was told he would receive, that he was often pressured to collect outstanding balances on customer accounts even though the customers' products were not ready to ship, that he had to work in an unhealthy environment with improper ventilation, and that Jason Graff engaged in favoritism when enforcing the call-volume quota. These complaints are not relevant to our analysis. *See Brown v. Nat'l Am. Univ.*, 686 N.W.2d 329, 332 (Minn. App. 2004) ("We are not concerned with whether or not the employee should have been discharged

but only with the employee's eligibility for benefits after termination of employment.”), *review denied* (Minn. Nov. 16, 2004).

In summary, it is undisputed that Cahoon was warned regarding his low call volume and was aware of the 50-call expectation. Cahoon improved his call volume after each warning, showing he was capable of meeting the expectation. But soon after each improvement, his call volume decreased, even though other sales associates with the same obligation met the call-volume expectation. The ULJ concluded that because “[t]he evidence supports that Cahoon did not make the effort to do his expected sales calls and that he would have had sufficient time to make the calls,” he was discharged for employment misconduct. We agree. “As a general rule, refusing to abide by an employer’s reasonable policies and requests amounts to disqualifying misconduct.” *Schmidgall*, 644 N.W.2d at 804. “This is particularly true when there are multiple violations of the same rule involving warnings or progressive discipline.” *Id.* at 806-07 (citing *Gilkeson v. Indus. Parts & Serv., Inc.*, 383 N.W.2d 448, 452 (Minn. App. 1986) (concluding that employee’s conduct was misconduct when he engaged in pattern of failing to follow policies and procedures and ignoring directions and requests); *Campbell v. Minneapolis Star & Tribune Co.*, 345 N.W.2d 803, 805 (Minn. App. 1984) (concluding that repeated violations of employer’s work rules and neglect of job responsibilities demonstrated employment misconduct)).

Viewing the ULJ’s factual findings in the light most favorable to the decision and deferring to the ULJ’s credibility determination, we conclude that the ULJ did not err in

determining that Cahoon was discharged for employment misconduct and that he is ineligible for unemployment benefits.

Affirmed.