STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0621

Stephen Law,
Relator,

vs.

Monarch Bus Service, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed December 10, 2012
Affirmed
Worke, Judge

Department of Employment and Economic Development
File No. 28802973-4

Jane L. Prince, Weinblatt & Gaylord, PLC, St. Paul, Minnesota (for relator)

Thomas Richard Revnew, Seaton, Peters & Revnew, P.A., Minneapolis, Minnesota (for respondent employer)

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

Considered and decided by Halbrooks, Presiding Judge; Worke, 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.

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

WORKE, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that he was ineligible to receive unemployment benefits because he was discharged for misconduct after refusing to attend a meeting to discuss his behavior. We affirm.

D E C I S I O N

This court reviews a ULJ's decision to determine whether an employee's 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). We view factual findings in the light most favorable to the decision and defer to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Relator Stephen Law was employed as a bus driver by respondent Monarch Bus Service, Inc., until October 14, 2011. On that date, he refused to participate in a meeting to respond to allegations of improper conduct in performing his duties. Relator's manager gave relator a choice between discussing the alleged conduct or being discharged. Relator refused to participate in the meeting but twice asked his manager to "step outside and fight." The manager discharged relator for "insubordination" and "[un]willing[ness] to discuss" the allegations of improper conduct. The ULJ ruled that

relator was ineligible to receive unemployment benefits because he was discharged for misconduct. Minn. Stat. § 268.095, subds. 4(1), 6(a) (2010).[1]

"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*., 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).

Whether an employee committed employment misconduct is a mixed question of fact and law. *Stagg v. Vintage Place, Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). Whether the employee committed a particular act is a fact question, which this court reviews in the light most favorable to the ULJ decision. *Skarhus*, 721 N.W.2d at 344. Whether an employee's conduct constitutes employment misconduct is a question of law, which this court reviews de novo. *Stagg*, 796 N.W.2d at 315.

Relator claims that "serious inconsistencies" and "misstatements" by the employer's representatives undermined the stated reasons for his discharge. The examples cited by relator are derived from differing witness accounts of his conduct on October 14. Our review of the record shows that any differences in descriptions of

[1] Although relator's instigating a physical fight with his manager was also grounds for dismissal, the ULJ did not rely on this evidence in reaching the decision, apparently because relator was discharged before he urged the fight. *See Hines v. Sheraton Ritz Hotel*, 349 N.W.2d 329, 330 (Minn. App. 1984) (stating that "[a]n employer has a right to expect employees not to physically fight at work").

relator's conduct refer to the same conduct—on October 14, relator refused to participate in an investigation, and he walked out the door when his manager warned him that if he left he would be discharged. While the examples provided by relator use varied language, they refer to the same conduct, which the ULJ determined constituted proper grounds for his discharge. As such, there was no "change" in the employer's given reason for relator's discharge.

Relator further asserts that there was "conflicting testimony on critical facts," primarily concerning "shifting timelines" and the enumerated reasons for his discharge. Relator argues that the e-mail regarding his alleged behavior did not suggest that he was about to be discharged—only that his response to behavioral problems on his bus route needed to be addressed, but that his manager fired him before the issue could be resolved. Viewing the evidence in the light most favorable to the ULJ's decision, any alterations in the purpose of the October 14 meeting are explained by relator's conduct during that meeting. Had relator participated in the discussion about his alleged improper conduct, the meeting may not have culminated in relator's discharge from employment. Further, the manager's characterization of specific questions that he asked relator during the meeting and the overall timeline of events were consistent. To the extent that relator viewed the facts differently than did his employer, particularly with regard to the October 14 meeting, the ULJ made credibility findings in favor of the employer which this court will not disturb. *Bangtson v. Allina Med. Grp*, 766 N.W.2d 328, 332 (Minn. App. 2009) (stating that "[c]redibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal").

As a separate issue, relator contends that his conduct was insufficient to constitute misconduct because it was an isolated instance and was not serious. However, the "single-incident" exception to employment misconduct is no longer included in the statute. *See Potter N. Empire Pizza, Inc.*, 805 N.W.2d 872, 876 (Minn. App. 2011) (concluding after review of statutory history that "isolated hotheaded-incident exception no longer exists"), *review denied* (Minn. Nov. 15, 2011). Rather, single acts of insubordination, such as here, when relator refused to meet with his employer to discuss allegations of impropriety against him, can constitute employment misconduct. *See McGowan v. Exec. Express Transp. Enters., Inc.*, 420 N.W.2d 592, 594, 596 (Minn. 1988) (ruling that delivery driver's intentional refusal to pick up employer's medication was misconduct); *Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 207 (Minn. App. 2004) (stating that an employee commits misconduct by intentionally refusing to perform a task), *review denied* (Minn. Mar. 30, 2004); *Bibeau v. Resistance Tech., Inc.*, 411 N.W.2d 29, 32 (Minn. App. 1987) (ruling that employee who deliberately disobeyed an employer's "stupid" instructions to perform quality-control checks committed misconduct); *Daniels v. Gnan Trucking*, 352 N.W.2d 815, 816 (Minn. App. 1984) (determining that employee's refusal to unload a truck was "a deliberate act of insubordination" that constituted misconduct). There is substantial evidence in the record to support the ULJ's decision.

Affirmed.