STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0146

Daniel E. Karasek,
Relator,

vs.

Minnesota Mining & Mfg. Co. (Corp.),
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed September 30, 2013
Affirmed
Halbrooks, Judge

Department of Employment and Economic Development
File No. 28789628-6

Daniel E. Karasek, Houston, Texas (pro se relator)

Minnesota Mining & Mfg. Co. c/o Barnett Associates, Inc., Garden City, New York (respondent)

Lee B. Nelson, Christine Hinrichs, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent Department of Employment and Economic Development)

Considered and decided by Hooten, Presiding Judge; Halbrooks, Judge; and Stauber, Judge.

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

HALBROOKS, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) that he was discharged for employment misconduct and is therefore ineligible for unemployment benefits. We affirm.

FACTS

Relator Daniel Karasek was employed by respondent Minnesota Mining & Manufacturing (3M) as a full-time, salaried quality engineer from November 15, 2010 to November 3, 2011. The parties agree that Karasek worked significantly fewer than 40 hours per week over a one-month period and did not report his absences. They dispute whether Karasek's failure to report his absences constitutes employment misconduct such that he is ineligible for unemployment benefits.

3M has a system for reporting employee time by exception. When Karasek was not at work, he was expected to report his time off in the timekeeping system. Procedures for reporting absences were communicated during new-employee orientation. Based on a tip, Karasek's supervisor collected entrance logs for the building and discovered that during the period September 26-October 25, 2011, Karasek was on-site a total of 78 hours. Specifically, Karasek was gone four full days in a two-week period, including a day when he interviewed for a job with another company. Karasek did not report any absences in the timekeeping system. He later stated that he worked from home on certain occasions, but did not mention this to his supervisor because he knew that his supervisor would not approve.

On November 3, 2011, 3M discharged Karasek for falsification of time records. Karasek attempted to tender his resignation immediately thereafter. Karasek applied for unemployment benefits with respondent Minnesota Department of Employment and Economic Development (DEED) but was found ineligible because he indicated that he had quit. Karasek appealed and had a hearing before a ULJ. Due to a scheduling miscommunication, 3M's witnesses were unavailable. The ULJ heard Karasek's testimony and concluded that he was discharged for employment misconduct and is therefore ineligible for unemployment benefits. Upon reconsideration, the ULJ affirmed this decision.

Karasek's first certiorari appeal to this court followed, and we reversed and remanded for further development of the record. On remand, the ULJ conducted an evidentiary hearing at which a 3M witness testified. Following the hearing, the ULJ again concluded that Karasek was discharged for employment misconduct and is therefore ineligible for unemployment benefits. On reconsideration, the ULJ affirmed the decision. This certiorari appeal follows.

D E C I S I O N

We review a ULJ's decision to determine whether a party'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) (2012). A person discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2012). Employment misconduct is "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) (2012).

Whether an employee engaged in employment misconduct presents a mixed question of law and fact. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether an employee committed a particular act is a question of fact. *Id.* Whether that act constitutes employment misconduct is a question of law, which we review de novo. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011).

We view the ULJ's factual findings in the light most favorable to the decision. *Skarhus*, 721 N.W.2d at 344. We defer to the ULJ's credibility determinations. *Id*. When the credibility of a witness has a significant impact on the decision, the ULJ must "set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1(c) (2012). A credibility determination has a significant impact on the decision when the ULJ's misconduct determination rests on disputed testimony. *Wichmann v. Travalia & U.S. Directives*, 729 N.W.2d 23, 29 (Minn. App. 2007).

Karasek does not deny that he worked no more than 25 hours per week from September 26-October 25 without reporting any time off or that he worked from home without seeking permission to do so. The gravamen of Karasek's argument is that he was not required to work 40 hours per week and he was authorized to work from home because he was issued a laptop and approved for Virtual Private Network (VPN) access.

Karasek's supervisor testified that 3M's full-time, professional employees are expected to work full-time hours and to report their time by exception. He also testified that employees must seek permission to use flextime and alternative work arrangements, which Karasek did not do. The ULJ credited the supervisor's testimony and made specific findings noting his reasons. With respect to Karasek's testimony, the ULJ noted that Karasek confused being given the ability to work from home with being given permission to work from home. We conclude that the ULJ satisfied the statutory obligation to set out the reasons for crediting the supervisor's testimony (it was plausible and logical) and discrediting at least some of Karasek's testimony (it was internally inconsistent and confused). *Compare Wichmann*, 729 N.W.2d at 29 (reversed and remanded because ULJ failed to address credibility), *with Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 532-33 (Minn. App. 2007) (statutory obligation satisfied by a basic finding that specific testimony by the relator was not credible and testimony by another witness was credible).

Karasek nevertheless asserts that 3M's internal policy manuals would show that full-time, salaried employees are not required to work full-time hours or report deviations from the expected work schedule. But the referenced policy manuals are not part of the record. Furthermore, the "general rule" regarding employment misconduct only requires that an employer's policies be "reasonable," *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002); it does not require such policies to be in employee handbooks. *Cf. Stagg*, 796 N.W.2d at 316 ("[W]hether an employer follows the procedures in its

employee manual says nothing about whether the employee has violated the employer's standards of behavior.").

The ULJ's findings that (1) 3M requires its employees to report when they deviate from an expected work schedule and to get permission to work from home, (2) Karasek worked no more than 25 hours per week without reporting absences, and (3) Karasek did not get approval to work from home are supported by substantial evidence in the record. "[T]his court will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). Thus, we will not disturb the ULJ's factual findings.

Whether employee conduct amounts to a serious violation of the standards of behavior the employer has the right to reasonably expect of employees is an objective determination that turns on whether the employer's expectation was reasonable under the circumstances. *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 290 (Minn. 2006). Refusing to follow an employer's reasonable policies and requests generally constitutes employment misconduct. *Schmidgall*, 644 N.W.2d at 804. Falsifying a time card is employment misconduct. *McKee v. Cub Foods, Inc.*, 380 N.W.2d 233, 234, 236 (Minn. App. 1986); *Ruzynski v. Cub Foods, Inc.*, 378 N.W.2d 660, 663 (Minn. App. 1985). And "[d]ishonesty that is connected with employment may constitute misconduct." *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305, 307-08 (Minn. App. 1994); *see also Skarhus*, 721 N.W.2d at 344 (concluding that employee's theft constituted misconduct because it undermined the employer's ability to assign essential job functions to her).

We conclude that there is nothing unreasonable about 3M's expectations that its employees report absences from work and request permission to work from home. It is undisputed that Karasek neither reported when he deviated from an expected work schedule nor sought permission to work from home. Karasek's failure to comply with his employer's policies for reporting time off and seeking permission for alternative work arrangements constitutes a serious violation of the standards of behavior that 3M has a right to expect. It further demonstrates a substantial lack of concern for the employment.

Substantial evidence supports the ULJ's determination that Karasek committed employment misconduct by working significantly less than 40 hours per week, failing to report his absences as required, and working from home without permission, while collecting his full salary. We conclude that the ULJ's determination that Karasek was discharged by 3M for employment misconduct was not made in error.

Karasek also argues that the ULJ erred in his handling of Karasek's requests for 3M's internal policy manuals. We disagree. At the beginning of the first evidentiary hearing, the ULJ advised Karasek that he had the right to request that the hearing be rescheduled if there was specific evidence outside his control that needed to be obtained by subpoena. Karasek did not ask to reschedule the hearing, and there is no indication that Karasek ever requested a subpoena.

At the second evidentiary hearing, Karasek's supervisor testified regarding 3M's policies. After this hearing, Karasek again protested 3M's failure to produce its employment handbook. On reconsideration, the ULJ determined that the content of the policy manuals would not affect the outcome and affirmed his decision. We conclude

that the ULJ did not abuse his discretion in declining to schedule a third evidentiary hearing when Karasek failed to request a subpoena for the policy documents and there was other credible evidence in the record regarding 3M's policies. *See Kelly v. Ambassador Press, Inc*., 792 N.W.2d 103, 104 (Minn. App. 2010).

Affirmed.