STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0239

David Williams,
Relator,

vs.

Clusiau Sales & Rental,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed November 25, 2013
Affirmed
Kalitowski, Judge

Department of Employment and Economic Development
File No. 30309984-4

David Williams, Princeton, Minnesota (pro se relator)

Clusiau Sales & Rental, Grand Rapids, Minnesota (respondent)

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

Considered and decided by Kalitowski, Presiding Judge; Worke, Judge; and Connolly, Judge.

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

KALITOWSKI, Judge

Relator David Williams challenges the unemployment-law judge's (ULJ) decision that he is ineligible for unemployment benefits because he was discharged for employment misconduct. Williams argues that (1) the ULJ erred by concluding that Williams committed employment misconduct; (2) the ULJ erred in its credibility determinations; and (3) the ULJ failed to ensure that the facts were fully and clearly developed. We affirm.

D E C I S I O N

I.

Williams claims that he is eligible for unemployment benefits because he did not commit employment misconduct. We disagree.

When an employer discharges an employee for "employment misconduct," the employee is disqualified from receiving 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." *Id.*, subd. 6 (2012). As a general rule, refusing to comply with an employer's reasonable policies and requests is disqualifying misconduct. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

A challenge to the ULJ's determination that an employee committed employment misconduct presents a mixed question of fact and law. *Id.* Whether the employee committed a particular act is a question of fact, but whether the employee's act constitutes employment misconduct is a question of law that we review de novo. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). In reviewing the ULJ's decision, "[w]e view the ULJ's 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). We will not disturb the ULJ's factual findings if they are supported by substantial evidence. *Id.*

Williams was employed as a General Motors (GM) service technician at Clusiau Sales & Rental (CSR) from August 10, 2009, until his discharge on June 19, 2012. CSR requires its service technicians to complete a high number of GM training courses, which are offered online on GM's website. Williams argues that because he completed enough training to remain GM-certified he did not violate CSR's training policy.

The ULJ concluded that CSR had a right to expect that Williams would make reasonable efforts to complete the amount of training required by CSR and that Williams failed to complete a satisfactory amount of training.

We conclude that the ULJ's findings regarding the reasonableness of CSR's training requirements are supported by substantial evidence. At the evidentiary hearing, three CSR witnesses testified that completing the requisite number of training courses would take technicians a few hours each month. CSR's witnesses further testified that if its service technicians did not complete a high number of training courses CSR would

lose its GM "warranty gratification." If they lost GM's "warranty gratification," GM would refuse to pay for certain warranty work completed on GM vehicles. CSR submitted an exhibit indicating that one month, when its service technicians failed to complete the number of training courses required, GM refused to pay approximately $4,250 in warranty work.

We further conclude that the ULJ's findings that Williams failed to complete the amount of training required by CSR or make reasonable efforts to increase his training is supported by substantial evidence. Williams testified that he did not complete the number of training courses CSR required because he had unreliable Internet connection at his home, which would often stop working when he attempted the online courses. But CSR managers testified that Williams could have used the computers at CSR to complete his training. And Williams acknowledged that he was told he could use CSR's computers when he was not scheduled to work. Williams, however, testified that he chose not to use CSR's computers because he was not compensated for this time and did not want to spend his personal time completing the training.

In addition, Williams received monthly reports indicating how many training courses he had completed. Two CSR supervisors testified that Williams was told in January and May of 2012 that if he did not complete more training he may be discharged. Two CSR witnesses testified that they expect their service technicians to complete anywhere from 75-100% of the training courses offered. The monthly reports that Williams submitted indicated that from January to June 2012 Williams completed only

50% of the courses offered. This provides substantial evidence that Williams failed to complete a satisfactory amount of training.

Because the record provides substantial evidence that Williams failed to comply with his employer's training requirements, we affirm the ULJ's determination that Williams engaged in employment misconduct.

II.

Williams argues that Tom Clusiau, one of CSR's witnesses, lied under oath and that the ULJ erred by determining that Clusiau was a credible witness. Williams and Clusiau offered conflicting testimony regarding the reason Williams was discharged. Williams testified that he was discharged because other employees were jealous of his work performance. Clusiau testified that Williams was discharged because he failed to complete the requisite number of training courses and because other employees were upset that they had to complete the training courses when Williams did not. The ULJ concluded that Clusiau's version of events was more credible because it was more specific and detailed, more reasonable under the circumstances, and followed a more logical chain of events.

When the record supports it, "[c]redibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus*, 721 N.W.2d at 345. We conclude that the ULJ's finding that Clusiau was a more credible witness is supported by substantial evidence.

Five witnesses appeared on behalf of CSR at the evidentiary hearing. Three witnesses testified, each corroborating Clusiau's testimony. Moreover, as the ULJ noted

in its order on reconsideration, the new evidence that Williams submitted damaged his credibility. Williams submitted a report indicating the number of training courses he had completed and the dates he completed the courses. The record reveals that at the time Williams was discharged his training-session completion rate was at 50.36%. At the evidentiary hearing, Williams had testified that his completion rate was near 75%. Williams also testified at the hearing that he made an effort to complete more training courses in the weeks preceding his discharge. But the training records he subsequently submitted show that he did not complete any courses from May 9, 2012, to July 9, 2012. Finally, the training records indicate that Williams completed over 70 online courses between July 10, 2012, and August 9, 2012. As the ULJ noted, this supports CSR's testimony that Williams was capable of passing a substantial number of courses within a few weeks.

Because the record provides substantial evidence supporting the ULJ's credibility determination, we affirm the ULJ's decision.

III.

Finally, Williams argues that the ULJ failed to properly develop the facts at the evidentiary hearing. This court will reverse a ULJ's decision if it was based upon unlawful procedure. *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 31 (Minn. App. 2012). "The [ULJ] is to conduct the evidentiary hearing as an evidence gathering inquiry rather than an adversarial proceeding and shall ensure that all relevant facts are clearly and fully developed." *Ywswf v. Teleplan Wireless Servs., Inc.*, 726

N.W.2d 525, 529 (Minn. App. 2007) (quotations omitted). And the ULJ "should assist unrepresented parties in the presentation of evidence." Minn. R. 3310.2921 (2011).

Williams argues that the ULJ did not adequately question Clusiau about the private conversation the two had on June 22, 2012. Williams contends that during this meeting, Clusiau told Williams that he was not discharged; rather he was laid off because other employees were jealous of Williams's performance.

We conclude that the ULJ did not fail to develop the record on this issue. At the evidentiary hearing, Williams agreed that on June 19, 2012, his manager told him that he was discharged. Both Williams and the manager testified that this meeting was brief, and that Williams was not told why he was discharged. The ULJ heard ample testimony regarding why Williams was discharged, including Williams's belief that he was discharged because of jealousy within the dealership. Thus we conclude that any additional information about the private meeting between Williams and Clusiau would not have affected the ULJ's determination. Moreover, after Clusiau testified, the ULJ specifically asked Williams if he had any further questions and Williams said "nope."

We conclude that the ULJ properly developed the record as to the material issues and that Williams received a fair hearing.

Affirmed.