

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0293**

Kharima Younger,
Relator,

vs.

AlliedBarton Security Services, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed October 15, 2013
Affirmed
Halbrooks, Judge**

Department of Employment and Economic Development
File No. 29993981-5

Kharima Younger, St. Paul, Minnesota (pro se relator)

AlliedBarton Security Services, LLC, Londonderry, New Hampshire (respondent)

Lee B. Nelson, 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.

UNPUBLISHED OPINION

HALBROOKS, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that she is ineligible to receive unemployment benefits due to termination for employment misconduct. We affirm.

FACTS

Relator Kharima Younger was employed by respondent AlliedBarton Security Services, LLC as a security officer for United Health Group from July 19, 2010, to June 26, 2011. Younger was terminated after she failed to attend a scheduled training in cardiopulmonary resuscitation (CPR). The parties dispute the events leading to the termination.

AlliedBarton employees assigned to work for United Health Group must complete CPR training within the first nine months of their assignment. AlliedBarton account manager, Robert Truesdell, testified that he informed Younger of this requirement during her employment interview. According to Truesdell, after Younger was hired, AlliedBarton made several attempts to schedule her for CPR training. But Younger was often unavailable. AlliedBarton subsequently scheduled Younger for CPR training on June 24, 2011. Truesdell testified that Younger was advised on three occasions that she was expected to attend the June 24 training: (1) by her site supervisor, Jason Fellows; (2) by her training supervisor, Russ McNevin; and (3) via a posted work schedule that Younger was required to check each week. Younger denies being given any notice of the June 24 training or the requirement that she be trained in CPR. Younger was terminated

from her assignment with United Health Group after she was a “no call, no show” at the CPR training.

Following her termination, Younger applied for unemployment benefits, and respondent Minnesota Department of Employment and Economic Development (DEED) deemed Younger eligible for benefits. AlliedBarton appealed. Following a hearing, a ULJ issued a decision that Younger is eligible for unemployment benefits because she was terminated for reasons other than employment misconduct. Several days later, DEED discovered that the ULJ who conducted the hearing did not have a valid attorney’s license and therefore was unauthorized to serve as a ULJ. Before the decision became final, the chief ULJ issued an order setting aside the decision and transferring the matter to a licensed ULJ.

Following an additional evidentiary hearing, the second ULJ found that Younger was terminated for employment misconduct and is therefore ineligible to receive unemployment benefits. The ULJ affirmed that decision upon reconsideration. 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). Substantial evidence is “(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or

(5) the evidence considered in its entirety.” *Minn. Ctr. for Env’tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 464 (Minn. 2002).

I.

A person discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2012). Whether an employee engaged in employment misconduct presents a mixed question of fact and law. *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). In conducting our review, we defer to the ULJ’s credibility determinations. *Skarhus*, 721 N.W.2d at 344. 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).

Younger challenges the ULJ’s determination that she committed employment misconduct by failing to attend CPR training on June 24, arguing that she was not given notice of this training or AlliedBarton’s policy that she receive CPR training. But the ULJ credited Truesdell’s testimony that AlliedBarton notified Younger of the scheduled training and the requirement that she attend it, finding his testimony to be “logical and specific, and more reasonable under the circumstances.” The ULJ discredited Younger’s testimony that she was unaware of the training, reasoning that it is “not plausible that Younger [did] not receive any information regarding CPR training in a year of employment [where] the training was a requirement of the position.” Because the ULJ

set out her reasons for the credibility determinations, we will not reweigh the testimony. Substantial evidence in the record supports the ULJ's finding that Younger failed to attend the scheduled and mandatory CPR training.

Whether Younger's failure to attend the June 24 training constitutes employment misconduct is an issue we review de novo. *See Stagg*, 796 N.W.2d at 315. 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 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 inquiry into 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 v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

We discern nothing unreasonable about AlliedBarton's policy that employees assigned to United Health Group receive CPR training or its specific directive that Younger attend the June 24 training. Younger's refusal to comply with that directive constituted a serious violation of the standards of behavior that AlliedBarton had a right to expect. It further demonstrated a substantial lack of concern for her employment with AlliedBarton, given that the training was a requirement for continued employment.

Accordingly, the ULJ did not err by determining that Younger committed employment misconduct.

II.

Younger challenges the order of the chief ULJ, which set aside the decision of the unlicensed ULJ. The chief ULJ may transfer any pending proceeding from one ULJ to another ULJ. Minn. Stat. § 268.105, subd. 1(e) (2012). Only attorneys licensed to practice law in Minnesota are authorized to serve as ULJs. *Id.*

The initial ULJ assigned to this case did not have a valid attorney's license at the time he issued his decision. Once that became known and before that decision became final, the chief ULJ issued an order setting aside the decision and transferring the case to a licensed ULJ for review. Younger asserts that the chief ULJ took this action in order to "find someone who would go against [her]." But the record belies that assertion. The chief ULJ's order explained that the initial decision "was not in accordance with Minnesota statutory requirements." While that order did not offer further detail concerning why the decision fell short of the statutory requirements, it nevertheless indicated the reason for the case reassignment.

Because licensure by the state bar is a requirement for ULJs and because the chief ULJ has statutory authority to reassign pending matters, the chief ULJ acted within his authority in setting aside the first decision and transferring the matter for review.

Affirmed.