STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0697

Vicky L. Barrett,
Relator,

vs.

Rot Katzchen, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed March 3, 2014
Affirmed
Ross, Judge

Department of Employment and Economic Development
File No. 30490996-3

Vicky L. Barrett, Burnsville, Minnesota (pro se relator)

Rot Katzchen, LLC, Champlin, Minnesota (respondent employer)

Lee B. Nelson, Christine Hinrichs, St. Paul, Minnesota (for respondent department)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Halbrooks, Judge.

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

ROSS, Judge

According to her boss, convenience store cashier Vicky Barrett was rude to customers, berated her supervisor, did not get along with coworkers, and refused to correct her attitude. The store owner fired her. An unemployment law judge found that Barrett's employer discharged Barrett for employment misconduct, disqualifying her from receiving unemployment benefits. Barrett challenges that determination, contending that the judge failed to explain his credibility assessment, prohibited her from presenting evidence, and rendered a decision lacking evidentiary support. Because the record disproves each of these contentions, we affirm.

FACTS

Vicky Barrett worked as a convenience store cashier at Rot Katzchen, LLC, for seven months in 2012. Her employer discharged her in November, and the Department of Employment and Economic Development initially determined her eligible for unemployment benefits. Rot Katzchen appealed the decision, and owner Erica Olson and Barrett gave conflicting testimony to an unemployment law judge (ULJ) who found Olson's testimony credible and Barrett's incredible.

Olson testified that she discharged Barrett because Barrett was demonstrably unhappy with the position, she did not get along with coworkers, and Barrett's actions began to reflect negatively on the business. For example, Barrett consistently berated a supervisor, bullied a new employee until that employee quit, and treated customers so

rudely that two of them complained. Olson testified that she unsuccessfully urged Barrett to change her attitude.

Barrett denied almost all of Olson's assertions and claimed Olson was lying. But the ULJ found Olson's testimony "more credible" than Barrett's, and he found that Barrett's "denial was not credible" and that her testimony was "often speculative . . . and in significant part irrelevant." The ULJ twice interrupted Barrett's testimony, first to elicit a more specific timeline and second to end testimony about irrelevant events that occurred after her discharge.

Because Olson had read a document that she represented as an email she received from the coworker who says she quit because of Barrett, the ULJ asked Olson to provide him with a copy of the email and stated that he would leave the record open so Barrett could respond to it. Olson transmitted a copy of the email but technical and clerical errors prevented it from being included in the record.

The ULJ found that Barrett had engaged in the behavior that Olson testified to and deemed the behavior employment misconduct, leaving Barrett ineligible for unemployment benefits. Barrett requested reconsideration, and the ULJ affirmed his prior decision.

Barrett appeals by writ of certiorari.

D E C I S I O N

Barrett raises three arguments supporting her position that the ULJ erred by deeming her ineligible for unemployment benefits. We will reverse or modify a ULJ's decision if we conclude that the relator's "substantial rights . . . may have been prejudiced

because the findings, inferences, conclusion, or decision are: . . . made upon unlawful procedure; . . . affected by other error of law; [or] unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d) (2012). None of Barrett's three arguments leads us to reverse. She maintains that the ULJ failed to explain his credibility determinations, prohibited her from presenting evidence, and made an evidentially unsupported decision.

I

The ULJ adequately explained why he believed Olson's testimony over Barrett's. Because credibility was central, the ULJ was required to make credibility findings and explain his reasons for them. Minn. Stat. § 268.105, subd. 1(c). The ULJ credited Olson's testimony at least in part because he found it "clear, direct, and focused on the issues in question." He discredited Barrett's testimony because it was "often speculative about Olson's motives and in significant part irrelevant to the issue in question." He discredited Barrett's alternative theories for her termination "because they were purely speculative" and were supported by "[n]o evidence . . . in the record." These credibility findings and the explanations satisfy the ULJ's obligation to weigh credibility and explain his rationale.

II

The record presents no circumstance where the ULJ improperly limited Barrett's presentation of evidence. The hearing was "an evidence gathering inquiry" during which the ULJ had a duty to "ensure that all relevant facts are clearly and fully developed." Minn. Stat. § 268.105, subd. 1(b). In doing so, he is authorized to control the hearing and

protect the parties' rights to a fair hearing. Minn. R. 3310.2921 (2013). That means he should "receive any evidence that possesses probative value" but should also "exclude any evidence that is irrelevant." Minn. R. 3310.2922 (2013). Barrett contends that the ULJ inappropriately cut her off during the hearing, failed to elicit testimony from her husband, and denied her the chance to respond to the coworker's email.

Contrary to Barrett's argument, the ULJ did not improperly prevent her from discussing an argument she had with her supervisor. The record demonstrates that the ULJ asked for clarification of the time and circumstances of the argument. He never told Barrett to move on or prohibited her from giving additional details. Also contrary to her argument, the ULJ did not improperly prevent her from testifying about her interactions with Olson after her termination, because the posttermination interaction is irrelevant to the issue the ULJ needed to decide, which was whether the pretermination behavior constituted misconduct. And contrary to Barrett's contention, the ULJ did not unfairly prejudice her claim by prohibiting her rebuttal from wandering onto irrelevant ground, such as Barrett's complaints about her boss's alleged mismanagement.

Barrett also cites no error by pointing to the ULJ's treatment of her husband as a potential witness. Barrett initially said that her husband was available to testify, but Barrett never called him as a witness. The ULJ observed that he did not anticipate needing the husband's testimony—a reasonable prediction because Barrett's husband was apparently not present during the incidents giving rise to Olson's concerns that Barrett was impermissibly rude to supervisors, coworkers, and customers, and facts about these concerns were the relevant subjects of the hearing. Either party may call witnesses. Minn.

R. 3310.2921. And the ULJ never expressly or implicitly prohibited Barrett from calling her husband to testify to the extent he had any relevant information. Barrett never called her husband to testify. The ULJ ended the hearing by asking Barrett if she had any other information to provide. Barrett provided some additional testimony but eventually concluded, "[T]hat's all I've got to say." Although a ULJ must fully develop the record and should help unrepresented parties, he has no duty to call a witness—or to invite a party to call a witness—who cannot offer any apparently useful, relevant evidence.

We are not persuaded by Barrett's contention that the ULJ erred by not including a copy of the coworker's email to Olson before making his decision. The pertinent part of the email was read into the record during the hearing, allowing both parties to address it. In any event, the ULJ on reconsideration recognized the technical and clerical failure to provide a copy of the email to Barrett but explained "that Barrett's actions amount to employment misconduct even irrespective of this email." The record supports the ULJ's characterization, leaving us no room to hold that the lack of the email harmed Barrett's chance of victory.

III

Barrett's final contention plainly fails. The ULJ had a sufficient basis to find, by a preponderance of the evidence, that Barrett committed employment misconduct. Whether an employee committed employment misconduct is a mixed question of law and fact. *Dourney v. CMAK Corp.*, 796 N.W.2d 537, 539 (Minn. App. 2011). We view factual findings in the light most favorable to the ULJ's decision and we rely on them if they are

supported by substantial evidence. *Id.* Whether the facts constitute employment misconduct is a question of law reviewed de novo. *Id.*

An employee commits misconduct when she participates in "any intentional, negligent, or indifferent conduct . . . 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). The ULJ found that Barrett engaged in the conduct that Olson testified about; that is, he found that Barrett was rude to everyone in the workplace—managers, coworkers, customers. Deferring to the ULJ's fact findings, including his credibility findings, we are satisfied that the ULJ had substantial evidence to support his finding of misconduct. Our precedent teaches that an employee's rudeness to customers, fellow employees, and supervisors violates standards of behavior that an employer can reasonably expect. *Montgomery v. F & M Marquette Nat'l. Bank*, 384 N.W.2d 602, 605 (Minn. App. 1986); *Pitzel v. Packaged Furniture & Carpet*, 362 N.W.2d 357, 357–58 (Minn. App. 1985). We have also held that refusing an employer's reasonable requests constitutes misconduct. *See Cunningham v. Wal-Mart Assocs., Inc.*, 809 N.W.2d 231, 235 (Minn. App. 2011) ("An employee's refusal to abide by the employer's reasonable policies ordinarily constitutes employment misconduct.") (citation omitted). Barrett's behavior, as found by the ULJ on substantial evidence, easily qualifies as misconduct.

Affirmed.