STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0229

John D. Huseby,
Relator,

vs.

Taylor Made Lawn and Landscape, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed May 20, 2008
Affirmed
Peterson, Judge

Department of Employment and Economic Development
File No. 13300 06

John D. Huseby, 9937 Pondview Circle, Champlin, MN 55316 (pro se relator)

Taylor Made Lawn and Landscape, LLC, 5820 74th Avenue North, Brooklyn Park, MN 55443 (respondent)

Lee B. Nelson, Katrina I. Gulstad, Minnesota Department of Employment and Economic Development, First National Bank Building, Suite E200, 332 Minnesota Street, St. Paul, MN 55101-1351 (for respondent Department of Employment and Economic Development)

Considered and decided by Stoneburner, Presiding Judge; Peterson, Judge; and Wright, Judge.

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

PETERSON, Judge

This is a certiorari appeal from an unemployment law judge's decision that relator is disqualified from receiving unemployment benefits because he was discharged for misconduct. Because relator has not identified any prejudicial error, and no prejudicial error is obvious on mere inspection of the record, we affirm.

FACTS

Relator John D. Huseby worked for respondent Taylor Made Lawn & Landscape LLC as a maintenance worker during the summer months in 2005 and 2006. Huseby's primary duties included operating an industrial-size lawnmower and a weed whipper.

In early May 2006, members of Huseby's crew saw Huseby drive a lawnmower into a tree, without making any noticeable effort to steer around it, which damaged the lawnmower. Huseby also filled a lawnmower fuel tank with diesel fuel, rather than regular unleaded fuel. Huseby realized his mistake before causing the lawnmower any damage, but the incident cost Taylor Made time and materials because Taylor Made's owner, Thomas Connors, had to flush out the tank and install new washers. Connors stated that after this incident, he warned Huseby that "you've got to pay more attention to what you're doing."

During approximately this same time period, Huseby took a truck home from work and left the parking brake on while driving the truck on the highway, despite an indicator light on the dashboard that showed that the brake was engaged. As a result, Connors had to replace the rear rotors and brakes on the truck, and Connors told Huseby

that he could no longer use the truck. In late May or early June 2006, Huseby drove one of the lawnmowers too fast, which caused a belt to come off. While Connors assisted Huseby with repairing the belt, he warned him to slow down and use caution when operating the lawnmower. Connors was concerned because customers from a townhouse complex had called to complain that lawnmowers were being driven too fast around their buildings. About a week later, Huseby's direct supervisor told Connors that Huseby was not slowing down; Connors told the supervisor to talk to Huseby and give him one more warning. A note from Huseby's supervisor indicates that he gave Huseby oral warnings on June 1, 4, and 7, 2006.

Around June 9, 2006, Taylor Made discharged Huseby for performing his job carelessly and damaging equipment. Huseby filed a claim for unemployment benefits with respondent Minnesota Department of Employment and Economic Development, and a department adjudicator found that Huseby was entitled to benefits. Taylor Made appealed to an unemployment law judge (ULJ), and, following an evidentiary hearing, the ULJ determined that Huseby had been discharged for misconduct and was not entitled to benefits. Huseby's father, who was his representative during the evidentiary hearing, requested reconsideration of the ULJ's decision, arguing that the ULJ's findings of fact contained factual errors. With his request for reconsideration, Huseby submitted a note from another crewmember, which states: "I never seen [Huseby] hit a tree while mowing or anything else for that matter."

On reconsideration, the ULJ determined that the note was not admissible because it was not submitted during the initial evidentiary hearing and that Huseby had not met

the standard for conducting an additional evidentiary hearing. The ULJ concluded that even taking the note into consideration, "it does not conclusively refute the finding that [Huseby] hit a tree with the mower." The ULJ affirmed the findings of fact and decision that Huseby is ineligible for unemployment benefits because he was discharged for misconduct. This pro se certiorari appeal followed.

D E C I S I O N

We review the ULJ's decision to determine whether relator's substantial rights were prejudiced because the findings, inferences, conclusions, or decision are affected by error of law or unsupported by substantial evidence in view of the entire record. *See* Minn. Stat. § 268.105, subd. 7(d) (2006) (providing bases on which this court may reverse or modify ULJ's decision). This court defers to the ULJ's decisions regarding conflicts in testimony and the inferences to be drawn from testimony. *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007).

On appeal, Huseby does not explicitly contend that he did not engage in employment misconduct. Instead, he asserts that the ULJ's order of affirmation contains factual errors because (1) Huseby did not acknowledge his supervisor's note indicating that he gave Huseby warnings on June 1, 4, and 7; (2) his supervisor could not have given him a warning on June 4, because June 4 was a Sunday and the lawn crews did not work on Sundays; (3) contrary to his supervisor's note, he was only given one oral warning; and (4) during the hearing, he never admitted that "maybe" he was driving the mower too fast.

The ULJ stated, in the order of affirmation:

> Huseby[1] first disputes the finding that his son was warned several times about the unsafe operation of a commercial mower because his son denied it and there were no written statements from any witnesses. Huseby then acknowledges the statement from [his supervisor], in Exhibit E3, attesting to warnings given to John Huseby on June 1, June 4, and June 7 about abusing company property.

It is apparent that this statement is a description of the arguments that Huseby's father made in the request for reconsideration, rather than new findings of fact made by the ULJ on reconsideration.

The order of affirmation also states that "[Huseby] then attempts to excuse his son's admission that 'maybe' he was driving too fast on the grounds that he had been asked the question more than once and apparently the unemployment law judge didn't like his initial denial." This statement is addressing Huseby's father's argument that Huseby's father only heard Huseby acknowledge during the hearing that "maybe" he was driving too fast; it is not a finding of fact that Huseby admitted that "maybe" he was driving too fast.

At the evidentiary hearing, the ULJ questioned Huseby as follows:

> Q: Then there was an incident where the belt came off of a mower and Mr. Connors testified that he came out and helped repair it. Do you remember that incident[?]
> A: Yes.
> Q: Mr. Connors testified that it was because you were operating the mower to[o] fast, is that true[?]
> A: Yes.

[1] Because relator's father submitted the request for reconsideration, the references to Huseby in the order of affirmation are references to relator's father.

It appears that this testimony is the basis for the ULJ's finding in the initial findings of fact and decision that Huseby "admitted that the belt came off because he had been driving too fast." It also appears that the ULJ might have misunderstood Huseby's testimony and that the only thing that Huseby admitted was that Connors testified that the belt came off for that reason, not that Huseby agreed that the reason the belt came off was that Huseby was driving too fast.

But other than citing these alleged factual errors, Huseby does not make any argument why the ULJ's conclusion that he was discharged for employment misconduct is erroneous. Nor does he explain how the alleged factual errors affected the ULJ's decision. "An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection." *Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519-20, 187 N.W.2d 133, 135 (1971). Prejudicial error is not obvious on mere inspection of the record. Huseby's ultimate assertion appears to be that Connors was not truthful about the incidents described above, but in light of the deference we give to the ULJ's decisions regarding conflicts in testimony and the inferences to be drawn from testimony, it is not obvious how we could conclude that Connors's testimony lacked credibility.

"Pro se litigants are generally held to the same standards as attorneys." *Heinsch v. Lot 27, Block 1 For's Beach*, 399 N.W.2d 107, 109 (Minn. App. 1987). But absent prejudice to the opposing party, this court will allow a "reasonable accommodation" to a pro se litigant. *Kasson State Bank v. Haugen*, 410 N.W.2d 392, 395 (Minn. App. 1987).

However, it is not a "reasonable accommodation" for us to speculate about what a litigant considers erroneous when there is no clear allegation of error. Because Huseby has made only general assertions about Connors's credibility and has not identified any basis for us to reverse the ULJ's findings of fact or to conclude that the ULJ erred, he has not shown that his substantial rights were prejudiced. Therefore, Huseby is not entitled to reversal of the ULJ's decision. *See Ywswf*, 726 N.W.2d at 530 (concluding that relator was not entitled to reversal when she failed to show prejudice to substantial rights).

Affirmed.