STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0509

Willy J. Alexis,
Relator,

vs.

G2 Secure Staff LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed April 1, 2008
Affirmed
Collins, Judge[*]

Department of Employment and Economic Development
File No. 16563 06

Willy J. Alexis, 345 North Wabasha Street, #709, St. Paul, MN 55101 (pro se relator)

G2 Secure Staff, LLC, 3050 Metro Parkway, Suite 122, Bloomington, MN 55425 (respondent)

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

Considered and decided by Hudson, Presiding Judge; Worke, Judge; and Collins, Judge.

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[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

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

COLLINS, Judge

Relator challenges the determination of the unemployment-law judge (ULJ) that he was discharged for employment misconduct and, therefore, is disqualified from receiving unemployment benefits. We affirm.

FACTS

Relator Willy J. Alexis was employed by G2 Secure Staff LLC, a contract service for airlines, from July 22, 2004, until he was discharged on September 30, 2006. He worked full time as a "wheelchair pusher," earning $7 per hour assisting airport passengers.

On the day that he was discharged relator became argumentative after his supervisor gave relator his assignment sheet and reminded him of certain procedures. The supervisor told relator to go to his gate and start working because he was not going to argue with relator. Relator insisted on debating "because Nelson Mandela debates." The supervisor again refused to "debate" and told relator to go to his gate or go home. Relator slammed his fist on the dispatch desk and loudly demanded that they debate before he started working. The supervisor again told relator to go to his gate or go home. At the hearing, relator denied telling the supervisor that they had to debate like Nelson Mandela.[1] Relator also disputed that he refused to go to his assigned gate, explaining that

[1] But relator admitted in his reply brief that "I said to [the supervisor]: Mandela said 'In the life, a Man is supposed to say NO for something he cannot do.'" Relator also argued in his brief that "[a]n operation manager who did not accept the brainstorming is wrong."

he was working gates C-1 through C-5 and was being sent to C-11, and "I say to my operation manager I say no cannot go at all gate at the same time."

The supervisor testified that relator then accused him very loudly of "protect[ing] all those stupid, f---ing Africans." Other employees around the dispatch desk waiting to sign in for their shifts were African. Relator denied that he said this.[2] Relator explained that he told his supervisor that "you protect to[o] much [a certain co-worker]." Relator contended that he was on his way to his gate to start working when his supervisor called him back, put his finger on relator's mouth, and told relator he no longer had a job with them. The supervisor testified he told relator "to wait right here . . . [b]ecause you're out of here" and called the police dispatch.

Relator did not stay as requested and went into a bathroom. Relator claimed that he politely asked to go to the bathroom, but the supervisor testified that "[a]t no point was he ever polite or quiet" and that he did not ask to use the bathroom. Relator testified, "I say I need to go to restroom then I disobey, I disobey I could not stay I went to restroom." The supervisor waited outside of the bathroom until the police arrived, and he then told relator that he was terminated for his several acts of insubordination. Realtor denied that his supervisor told him he was terminated and said that the only reason he did not go back to work was that the police had confiscated his security badge.

[2] In a letter to the ULJ dated December 11, 2006 (three days before the hearing) relator stated: "I said: [to the supervisor] I never gone out, you can say that to [a certain co-worker] who, yesterday, leaved [sic] at 8:00 pm, and I could not take my break. [Supervisor], I am a good worker, you persecute me too much, you accuse me too much; and you protect too much the African co-worker."

After the hearing, the ULJ found that relator had been discharged for employment misconduct. This certiorari appeal followed.

D E C I S I O N

Relator argues that the ULJ erred in finding that he had committed employment misconduct because (1) his supervisor lied at the hearing, and (2) his behavior on the day of his discharge was not misconduct. We disagree.

An employee who is discharged for employment misconduct is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2006). Employment misconduct is "any intentional, negligent, or indifferent conduct, on the job or off the job (1) that displays clearly a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee, or (2) that displays clearly a substantial lack of concern for the employment." *Id.*, subd. 6(a) (2006). But "a single incident that does not have a significant adverse impact on the employer" does not constitute employment misconduct. *Id.*

A challenge to the determination that an employee committed employment misconduct presents a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether the employee's act itself constitutes employment misconduct is a question of law, but whether the employee committed a particular act is a question of fact. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). The ULJ's factual findings are viewed in the light most favorable to the decision, and we defer to credibility determinations made by the ULJ. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). The ULJ's factual findings

will not be disturbed when substantially sustained by the evidence. Minn. Stat. § 268.105, subd. 7(d)(5) (2006).

An employer has a right to expect its employees to abide by reasonable instructions and directions. *Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 206 (Minn. App. 2004), *review denied* (Minn. Mar. 30, 2004). When an employer makes a reasonable request that does not impose an unreasonable burden on its employee, an employee's refusal to comply with the request constitutes employment misconduct. *Id.*; *Soussi v. Blue & White Serv. Corp.*, 498 N.W.2d 316, 318 (Minn. App. 1993); *Sandstrom v. Douglas Mach. Corp.*, 372 N.W.2d 89, 91 (Minn. App. 1985). A knowing violation of an employer's directives, policies, or procedures also constitutes employment misconduct because it demonstrates a substantial lack of concern for the employer's interests. *Schmidgall*, 644 N.W.2d at 804; *see Daniels v. Gnan Trucking*, 352 N.W.2d 815, 816-17 (Minn. App. 1984) (holding that employee's refusal to unload cargo when required to do so was single, deliberate act of insubordination constituting employment misconduct).

In addition to testifying to his version of events, relator made numerous attempts to discredit his supervisor at the hearing before the ULJ. Relator argued that he was disliked by his supervisors because he reported various improprieties to the general manager and he had rejected his supervisor's sexual advances. He also argued he was disliked because of his religion, race, and nationality. Relator claimed that he received harsher treatment than other workers. He argued that he would not have said anything disparaging about the African employees because they were his friends. Relator asked

the ULJ to "[p]lease do not judge me only as a wheelchair pusher" because in Haiti he was an attorney and a CPA and is a hard-working person.

Relator argues that "[t]he [ULJ] has erred and accepted the lie from [the supervisor] who is not a credible operations manager. I did not do anything wrong to be discharged." Essentially relator is asking this court to accept his version of the events leading to his discharge and disbelieve the supervisor's because relator claims "I was, only, disliked." But the supervisor's testimony was substantially corroborated by his contemporaneous written statements. And, after hearing relator's testimony and arguments, the ULJ specifically found that the supervisor's testimony was "more specific and credible" than relator's. *See Skarhus*, 721 N.W.2d at 344 (stating that this court defers to the ULJ's credibility determinations).

Relator next argues that his actions did not constitute misconduct because they were merely "good faith errors in answers or judgment." We disagree. Even if relator did not intend to be insubordinate towards his supervisor, the ULJ found that he refused to obey reasonable work instructions and became so argumentative that his supervisor felt compelled to call the police. Further, relator admitted in his briefing for this court that he attempted to argue with his supervisor when he was told to go to his first-assigned gate but that "[a]n operation manager who did not accept the brainstorming is wrong. . . . The opinion of an employee can help the employer to achieve success." *See Wehner v. Wehner*, 374 N.W.2d 569, 571 (Minn. App. 1985) (holding that "[s]tatements of facts made in briefs are to be taken as binding admissions."). Relator's claimed rationale –

that his supervisor should have "brainstormed" with him – does not alter the determination that relator refused to comply with a reasonable request of his supervisor.

Finally, the ULJ found that relator used profanity in violation of company policy to inappropriately describe his African coworkers, several of whom were standing within earshot.[3] The ULJ concluded that "[relator's] actions therefore show conduct clearly displaying serious violations of standards of behavior that the employer reasonably had the right to expect of its employees."

Even construing relator's behaviors in the aggregate as a single incident, we hold that it did not fit within the misconduct exception of a "single incident that does not have a significant adverse impact on the employer." Minn. Stat. § 268.095, subd. 6(a). This issue was not explicitly decided by the ULJ and not briefed by relator. Generally, issues not briefed on appeal are deemed waived. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982). But, because relator's conduct arguably constituted a single incident, justice requires addressing it here. *See* Minn. R. Civ. App. 103.04 (stating this court may review any matter deemed required by justice).

To determine if an employee's conduct adversely impacted his employer, courts view the conduct in the context of the employee's job duties. *Skarhus*, 721 N.W.2d at 344. Conduct has a significant adverse impact if the conduct undermined the employer's "ability to assign the essential functions of the job to its employee." *Id.* Here relator

[3] Relator also claimed that the dispute was partially due to a language barrier. But relator had been an employee for several years and in his brief he claimed that he would sometimes act as a Spanish and French interpreter for the supervisors.

repeatedly refused to perform his key job function: going to gates to assist passengers in wheelchairs. Relator's conduct thus had a significant adverse impact on his employer.

Because the factual findings are substantially sustained by the evidence and relator's acts constituted misconduct as a matter of law, the ULJ's determination that relator was discharged for employment misconduct should not be disturbed.

Affirmed.