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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1224**

Marjorie K. Ledin,
Relator,

vs.

Cortec Enterprises LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 22, 2008
Affirmed
Johnson, Judge**

Department of Employment and Economic Development
File No. 4615 07

Marjorie K. Ledin, 44 Lee Street, Forest Lake, MN 55025 (pro se relator)

Cortec Enterprises LLC, 468 Lake Street South, Forest Lake, MN 55025 (respondent)

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Development, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul,
MN 55101-1351 (for respondent Department)

Considered and decided by Willis, Presiding Judge; Halbrooks, Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

An unemployment law judge (ULJ) found that Cortec Enterprises LLC terminated the employment of Marjorie K. Ledin because she repeatedly failed to follow company policies and procedures. Accordingly, the ULJ determined that Ledin was terminated for employment misconduct and, thus, disqualified from receiving unemployment benefits. Ledin appeals by way of a writ of certiorari, arguing that the ULJ's findings are erroneous, that she did not receive a fair hearing, and that the ULJ erred in ruling on the admissibility of certain evidence. We affirm.

FACTS

Ledin worked as an assembler at Cortec from June 20, 2005, to February 20, 2007. The ULJ's findings describe ten occasions in which Cortec observed that Ledin did not follow the directions of her supervisors or failed to abide by company policies.

For example, at least twice during her employment, Ledin used an incorrect ratio of ingredients for an epoxy that is used to make "mission critical parts" for a defense contractor. The failure of the resin could be life-threatening. Because of the improper ratio of ingredients, the product failed, and Cortec lost a customer. On at least two other occasions, Ledin failed to follow procedures that required her to notify management if a machine was operating improperly or making unusual noises. Her failure to do so resulted in the breakdown of the machine, which required expensive repairs. Ledin also improperly assembled and packaged a shipment of parts, which gave rise to significant safety concerns for Cortec's customer. The situation came to a head on February 19,

2007, after Cortec again learned that Ledin had not followed procedures by failing to test transformers before shipping them. Cortec terminated Ledin the following day.

On February 26, 2007, Ledin requested unemployment benefits. The department of employment and economic development (DEED) determined that she was disqualified from receiving benefits. She appealed, and a ULJ conducted an appeal hearing by telephone. Cortec was represented by its owner, Jim Wells, and three other employees. The ULJ issued a written decision, concluding that Ledin was discharged for misconduct and was disqualified from receiving unemployment benefits. Ledin filed a request for reconsideration, but the ULJ affirmed the initial decision. Ledin appeals.

D E C I S I O N

This court reviews a ULJ's decision to determine whether the findings, inferences, conclusions, or decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record. *See* Minn. Stat. § 268.105, subd. 7(d) (2006). The ULJ's factual findings are viewed in the light most favorable to the decision being reviewed. *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006). The ultimate determination whether an employee was properly disqualified from receiving unemployment benefits is a question of law, which is reviewed de novo. *Id.*

A. Finding of Misconduct

Ledin argues that the ULJ erred by finding that she was terminated for misconduct, a conclusion that Ledin contends is unsupported by the evidence. A discharge for employment misconduct results in disqualification from unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2006). "Employment misconduct" is defined

as intentional, negligent, or indifferent conduct that clearly displays either “a serious violation of the standards of behavior the employer has the right to reasonably expect” or “a substantial lack of concern for the employment.” *Id.*, subd. 6(a). An employer has a right to expect its employees to follow reasonable instructions and directions. *Vargas v. Northwest Area Found.*, 673 N.W.2d 200, 206 (Minn. App. 2004), *review denied* (Minn. Mar. 30, 2004). Generally, refusing to follow an employer’s reasonable policies and requests is disqualifying misconduct because it shows a substantial lack of concern for the employer’s interest. *See Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

The ULJ found that Ledin failed to follow company policies and procedures on numerous occasions. The incidents mentioned above, as well as the ULJ’s other findings, are supported by the testimony of Wells, the testimony of Ledin herself, and notations in Ledin’s personnel file regarding oral warnings she was given.

Ledin argues in response that the true reason for her termination was her earlier threat to inform Minnesota Occupational Safety and Health (MnOSHA), an office within the state Department of Labor and Industry, that an ingredient of Cortec’s resin product is toxic. This issue arose in December 2006, when Ledin expressed concern about the toxicity of grit that is mixed with epoxy and asked Wells about its safety. Wells contacted the epoxy manufacturer and was told that the grit is benign. Wells conveyed that information to Ledin and believed that the issue was resolved. In January 2007, however, when questioned about faulty products that she had assembled and shipped, Ledin threatened to make a report concerning the grit. Wells then contacted the

manufacturer of the grit and again was assured that it is non-toxic, and he relayed that information to Ledin. Wells also gave Ledin some documentation indicating that the grit is non-toxic. Furthermore, in early February 2007, Wells gave Ledin information about a program she could attend to learn how to use a respirator. Ledin, however, did not attend the program. (Ledin did contact MnOSHA after her termination to report alleged violations at Cortec, but MnOSHA did not find any violations.) The ULJ rejected Ledin's claims concerning the allegedly toxic grit on the grounds that she had considerable performance problems before her complaint and that the company "was very responsive" to her concerns. The ULJ found that Cortec terminated Ledin for the reasons stated by Cortec, not because of retaliatory motive. This finding is supported by substantial evidence.

Ledin further argues that the ULJ erred by crediting the employer's testimony over her own testimony. "When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1(c) (2006). Credibility determinations are generally the "exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006). This court affirms such credibility determinations if the ULJ's findings are "supported by substantial evidence and provide the statutorily required reason for her credibility determination." *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 532 (Minn. App. 2007). The court of appeals will, however, "remand for additional findings" if such reasons are not

stated. *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 29 (Minn. App. 2007).

In this case, the ULJ did not explicitly find that the testimony of Cortec's owner and employees was more credible than Ledin's. But the absence of such a finding is immaterial because, on the key points, Ledin's testimony does not differ from Wells's testimony. Ledin does not dispute that the epoxy was mixed incorrectly; she simply blames the improper ratio on the lack of a scale. Ledin agrees that she damaged critical test equipment but claims that it was an accident. At the hearing, she did not specifically challenge several other facts to which Wells testified, including her failure to follow directions when packaging shipments or the failure to report a machine needing repair. That evidence alone is sufficient to support the ULJ's finding that Ledin was discharged for misconduct, even if the ULJ did not state that Wells's testimony was more credible than Ledin's on issues for which their testimony differed. Thus, the ULJ's determination is proper even without an explicit credibility determination because Ledin cannot show that her testimony, even if credited, would have had "a significant effect on the outcome of a decision." Minn. Stat. § 268.105, subd. 1(c).

B. Fair and Even-handed Hearing

Ledin also argues that she did not receive a fair hearing. A ULJ should conduct an evidentiary hearing "as an evidence gathering inquiry and not an adversarial proceeding." Minn. Stat. § 268.105, subd. 1(b). The ULJ "shall ensure that all relevant facts are clearly and fully developed." *Id.* Furthermore, in conducting the hearing, a ULJ has a duty to "exercise control over the hearing procedure in a manner that protects the parties'

rights to a fair hearing.” Minn. R. 3310.2921 (2005). A hearing generally is considered fair and even-handed if both parties are afforded an opportunity to give statements, cross-examine witnesses, and offer and object to evidence. *See Ywswf*, 726 N.W.2d at 529-30; Minn. R. 3310.2921.

Ledin specifically argues that she felt rushed and did not have enough time to present her testimony because the ULJ indicated that the hearing might need to be continued to another date. But the hearing transcript shows that Ledin had ample opportunity to present her case to the ULJ. Although the ULJ indicated that time might be short, she also stated that the hearing could be completed on another date if it were not completed that day. Ledin was allowed to testify for as long as she wished, and she indicated at the end of her direct testimony that she did not have anything else to add. The ULJ allowed Ledin the opportunity to cross-examine each witness, but Ledin did not have any questions for any of the company’s witnesses. After Ledin’s testimony, the ULJ allowed Wells to respond and then allowed Ledin to give a rebuttal. During the hearing, Ledin did not indicate in any way that she needed more time. Thus, our review of the hearing transcript assures us that Ledin was given a full and even-handed hearing. *See Ywswf*, 726 N.W.2d at 529-30.

C. Admissibility of Evidence

Ledin challenges two decisions of the ULJ concerning the admissibility of exhibits. The legislature has delegated broad discretion to DEED to develop rules that govern the department’s evidentiary hearings. In doing so, the legislature declared, “The rules need not conform to common law or statutory rules of evidence and other technical

rules of procedure.” Minn. Stat. § 268.105, subd. 1(b); *see also* Minn. R. 3310.2922 (2005) (noting that a ULJ is not bound by statutory and common-law rules of evidence). A ULJ may exclude evidence that is “irrelevant, immaterial, unreliable, or unduly repetitious.” Minn. R. 3310.2922. To obtain reversal, a relator must show that his substantial rights were prejudiced by an unlawful procedure or other error of law. Minn. Stat. § 268.105, subd. 7(d); *Ywswf*, 726 N.W.2d at 530.

Ledin contends that she wanted to offer evidence that is contained in her personnel file. During the hearing, the ULJ gave Ledin several opportunities to admit evidence, but she did not seek to do so. Thus, the ULJ did not err in not admitting parts of Ledin’s personnel file into the record because Ledin did not ask that they be admitted. Ledin also argues that the ULJ erred by admitting department exhibit number 9, which was not created until after she was terminated. Ledin did not object to its admission into evidence during the hearing. In any event, a Cortec employee testified that the document was created from notes that were in Ledin’s personnel file. Given the ULJ’s discretion concerning whether to admit evidence, the ULJ did not err in admitting department exhibit number 9. *See* Minn. R. 3310.2922. Thus, Ledin’s substantial rights were not prejudiced.

Affirmed.