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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1417**

Michael J. Voll,
Relator,

vs.

Archway Marketing Services, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 29, 2008
Affirmed
Halbrooks, Judge**

Department of Employment and Economic Development
File No. 6907 07

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Relator brings a certiorari appeal from an unemployment law judge's (ULJ) determination that he is disqualified from receiving unemployment benefits because of employment misconduct. Because there is substantial evidence in the record to support the ULJ's determination, we affirm.

FACTS

Pro se relator Michael Voll was employed full-time by respondent Archway Marketing Services, Inc. in the shipping and receiving department from January 2002 until his employment was terminated on April 9, 2007. Archway has a corporate policy that sets standards of conduct for its employees. This policy prohibits “[u]sing abusive language to any employee, supervisor, supplier or customer” and “[r]efusal or failure without good cause to follow the directives or instructions of a supervisor concerning the performance of work or any work-related matters.”

Relator received a written warning for violating this policy in April 2002 after he was involved in an argumentative confrontation with a supervisor. Relator challenged the authority of the supervisor, saying, “Don’t tell me what to do.” Relator was told that if he continued his behavior, it could result in additional disciplinary actions, including termination. On August 14, 2002, relator received a second written warning following two confrontations with supervisors on August 2 and August 8. This written warning was titled: “Final Written Warning for Insubordinate Behavior” and informed relator that

“[c]ontinued behavior of this nature will not be tolerated in the future and may result in additional disciplinary actions up to and including termination.”

Relator signed both of these written warnings but made a notation on them that he disagreed with the way his actions and the events were described. Following these written warnings, relator received performance reviews in May 2003 and April 2004 in which relator acknowledged that he was “trying not to be as argumentative as in the past,” and he thanked his supervisor for being “patient with my fiery personality at times.” Until 2007, relator received no other written warnings.

On March 15, 2007, relator became argumentative during a staff meeting. Archway staff members were discussing ways to improve productivity, and relator told management that they could “go to hell” if they were accusing him of not doing his job. Archway documented relator’s conduct and gave him a “Final Warning,” which informed relator “[i]n most cases, continued poor performance and/or further policy infractions will result in termination of employment.”

Despite this warning, on April 5, 2007, relator made inappropriate comments to his supervisor and questioned the directions given by that supervisor. As a result, relator’s employment was terminated, and Archway informed him that his continued written warnings for insubordination were the justification for the termination.

Relator applied for unemployment benefits with respondent Minnesota Department of Employment and Economic Development (DEED) after his termination. DEED made an initial determination that relator was disqualified from receiving benefits because his discharge was the result of employment misconduct. Relator appealed this

decision, and a hearing was held with a ULJ on May 22, 2007. The ULJ determined that relator is disqualified from receiving unemployment benefits because he was terminated for employment misconduct. Relator requested reconsideration, and the same ULJ affirmed his earlier decision, noting that although relator had provided 32 pages of documents in support of the reconsideration, they were “general criticisms” of Archway and were “too vague to be helpful” or “irrelevant” to the reconsideration. This certiorari appeal follows.

D E C I S I O N

Relator argues that the ULJ erred in his determination that relator’s employment was terminated as a result of employment misconduct. Relator argues that his conduct was not insubordinate and that the record lacks support for the factual findings made by the ULJ.

This court may overturn or modify a ULJ’s decision if

the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:

- (1) in violation of constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the department;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.

Minn. Stat. § 268.105, subd. 7(d) (2006).

Employment-misconduct cases present mixed questions of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). “Whether the

employee committed a particular act is a question of fact.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether the employee’s act constitutes disqualifying misconduct is a question of law, which this court reviews de novo. *Schmidgall*, 644 N.W.2d at 804; *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 27 (Minn. App. 2007).

Findings of fact are viewed in the light most favorable to the ULJ’s decision and will be upheld if supported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d)(5); *Skarhus*, 721 N.W.2d at 344. Substantial evidence means: (1) “[s]uch relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) [m]ore than a scintilla of evidence; (3) [m]ore than some evidence; (4) [m]ore than any evidence; and (5) [e]vidence considered in its entirety.” *Cable Commc’ns Bd. v. Nor-West Cable Commc’ns P’ship*, 356 N.W.2d 658, 668 (Minn. 1984).

An applicant for unemployment benefits is disqualified from receiving such benefits if the conduct causing his or her discharge amounts to employment misconduct. Minn. Stat. § 268.095, subd. 4(1) (2006). “Employment misconduct” is defined as

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.

Inefficiency, inadvertence, simple unsatisfactory conduct, a single incident that does not have a significant adverse impact on the employer, conduct an average reasonable employee would have engaged in under the circumstances, poor performance because of inability or incapacity, good faith errors in judgment if judgment was required, or absence

because of illness or injury with proper notice to the employer, are not employment misconduct.

Id., subd. 6(a) (2006).

The ULJ determined that relator's conduct "was a serious violation of known expectations," which constituted employment misconduct. Relator's argument that his conduct was not employment misconduct ignores the substantial support in the record for the ULJ's findings. Relator was aware of Archway's policies and had received multiple written warnings that his conduct could lead to his termination. Despite these warnings, relator continued to act in a manner that violated Archway's conduct policy. The record supports the ULJ's determination that relator was terminated for employment misconduct.

Relator suggests that a lack of documented improper conduct between 2002 and 2007 demonstrates that Archway testified untruthfully about his conduct. But the ULJ made implicit credibility determinations in its determination and found Archway's testimony about relator's conduct to be credible. Such credibility determinations are the "exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus*, 721 N.W.2d at 345.

Relator also argues that the ULJ denied his right to a fair hearing by refusing to allow him to testify about his positive work-related accomplishments. In reviewing the transcript of the hearing, the ULJ did limit relator's testimony and questions to those directly linked to his discharge and misconduct. But the ULJ was not required to investigate matters that relator wanted to testify about. While relator is correct that there

is authority to support a ULJ's consideration of a discharged individual's employment history, this record demonstrates that relator's conduct was deliberate or willful. As a result, the ULJ was not required to delve into his employment history or underlying attitude. *Cf. McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721, 725 (Minn. App. 1991) (holding that it is appropriate to delve into an employee's history, conduct, and underlying attitude when the circumstances of the employment misconduct did not overwhelmingly demonstrate that employee acted deliberately or willfully).

In addition to the above arguments, relator asks this court to review the 32 pages of documents that he submitted for the ULJ's reconsideration. But the ULJ determined that because these documents were not submitted at the initial hearing, they were barred from consideration by Minn. Stat. § 268.105, subd. 2 (2006). Therefore, they are inappropriate for consideration before this court. Finally, relator asserts that another co-worker was terminated for employment misconduct, and Archway did not contest the co-worker's application for unemployment benefits, which demonstrates a personal bias against him. Even assuming this allegation were true, the issue was not raised to the ULJ and, as a result, is not properly before this court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Affirmed.