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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1487**

Lucas L. Roggeman,
Relator,

v.

Shaky Town Express,
Respondent

Department of Employment and Economic Development,
Respondent.

**Filed August 26, 2008
Affirmed
Ross, Judge**

Department of Employment and Economic Development
File No. 7037 07

Lucas L. Roggeman, 727 South Galbraith Street, Blue Earth, MN 56013-2119 (relator pro se)

Lee B. Nelson, Katrina I. Gulstad, Department of Employment and Economic Development, 1st National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101-1351 (for respondent Department of Employment and Economic Development)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Collins, Judge.*

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

UNPUBLISHED OPINION

ROSS, Judge

In this certiorari appeal, relator Lucas Roggeman challenges an unemployment law judge's determination that he was discharged from Shaky Town Express for employment misconduct. Roggeman argues that the actual reason his employer discharged him was to retaliate for his lawsuit against Shaky Town over a paycheck allegedly owed to him. Roggeman also contends that his hearing was unfair and that he was unfairly denied a new evidentiary hearing based on new evidence. We affirm.

FACTS

Lucas Roggeman worked for Shaky Town Express as a truck driver from March 2, 2007, until April 6, 2007. During this brief period, Roggeman failed several times to properly maintain his logbook as required by federal regulations. Shaky Town's liability insurer told Shaky Town's vice president that it would increase the company's monthly premiums by \$500 if Shaky Town continued to employ Roggeman. The unemployment law judge (ULJ) found that that Roggeman's violations harmed Shaky Town's business because some customers consider the record of violations when choosing a carrier to transport their products.

After Shaky Town discharged Roggeman, the Department of Employment and Economic Development initially determined that Roggeman was discharged for reasons that did not constitute employment misconduct. Shaky Town appealed that determination and a ULJ concluded that it discharged Roggeman for employment misconduct. Roggeman requested reconsideration, and the ULJ affirmed her decision. Roggeman appeals.

DECISION

Lucas Roggeman contends that the ULJ's determination that he was discharged for misconduct is erroneous. He also challenges the hearing procedures. This court will affirm a ULJ's determination unless the decision derives from unlawful procedure, relies on an error of law, or is unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d)(3)–(5) (2006). When an employer discharges an employee for employment misconduct, the employee is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2006).

Roggeman argues that the ULJ's findings do not support a determination of employment misconduct. Employment misconduct is 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) (2006). Whether particular actions constitute employment misconduct is a question of law reviewed de novo. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). The ULJ found that Roggeman was cited three times for driver logbook violations and that these violations had an adverse impact on Shaky Town's safety record, which customers may consider when choosing a trucking company. According to Shaky Town's owner, these violations also caused Shaky Town's liability insurer to rate Roggeman as a high-risk driver. The insurer advised Shaky Town that if it continued to employ Roggeman, its monthly premium would increase by \$500. Roggeman argues that the ULJ should have disbelieved Shaky Town's owner's claim that Shaky Town's insurance rates would rise if it continued to employ him. But the ULJ found Shaky

Town's president to be credible, and credibility determinations are the "exclusive province of the ULJ and will not be disturbed on appeal." *Id.* at 345. Shaky Town discharged Roggeman because of the logbook violations and other alleged problems with Roggeman's performance that were not addressed by the ULJ.

We hold that Roggeman's failure to maintain his logbook constitutes employment misconduct. Federal law obligates every motor carrier to "require every driver used by the motor carrier to record his [or] her duty status for each 24 hour period." 49 C.F.R. § 395.8(a) (2007); *see also* 49 U.S.C. § 322(a) (2000) (authorizing the secretary of transportation to enact transportation regulations). The logbook is required to document each truck driver's hours of service, which the federal government strictly regulates to protect the lives of drivers and those who share the highway with them. 49 U.S.C. § 113(b) (2000) ("In carrying out its duties, the [Federal Motor Carrier Safety] Administration shall consider the assignment and maintenance of safety as the highest priority."); *see also* 49 C.F.R. § 395.8(e) (creating criminal liability for drivers and carriers who falsely or incompletely maintain their log book). Shaky Town had a right to expect Roggeman to abide by its requirement that he accurately complete his logbook in a timely manner. The requirement is imposed on Shaky Town by federal law and is also reasonable on independent public-welfare grounds. By disregarding his duty to maintain his logbook, Roggeman demonstrated a substantial lack of concern for his employment. *Cf. Nelson v. Hartz Truckline*, 401 N.W.2d 436, 439 (Minn. App. 1987) (explaining that relator engaged in misconduct when he received four speeding tickets driving the employer's vehicle), *review denied* (Minn. Apr. 29, 1987).

Roggeman argues that Shaky Town's real reason for discharging him was to retaliate for his lawsuit against Shaky Town for improperly withholding his paycheck. But the ULJ found that Shaky Town discharged Roggeman for logbook violations, necessarily rejecting as incredible Roggeman's retaliation theory. Roggeman provides no basis for us to question the ULJ's assessment.

Roggeman also contends that the ULJ did not allow sufficient time to address the evidence he submitted. We must therefore decide whether the ULJ's decision derives from an unlawful procedure. Minn. Stat. § 268.105, subd. 7(d)(3). The hearing transcript does not show that Roggeman asked the ULJ to consider any evidence. At one point, the ULJ did state, "I've got another hearing in a couple minutes and I really need to cut to the chase." But when the ULJ asked Roggeman if he had anything to ask Shaky Town's only witness, Roggeman declined. Nothing in the transcript suggests that Roggeman was rushed or believed he needed more time. The ULJ noted that the hearing lasted over 100 minutes, despite being scheduled for 75 minutes. Roggeman has failed to show that the ULJ's decision derives from an unlawful procedure.

Roggeman next argues that the ULJ confined his testimony to answering her questions. A ULJ must "exercise control over the hearing procedure in a manner that protects the parties' rights to a fair hearing." Minn. R. 3310.2921 (2007). The transcript does not include any instances when the ULJ required Roggeman to narrowly answer, except one occasion when the ULJ asked Roggeman to answer "yes or no" to a question after his previous answer had been unclear. Even if this request had been overly restrictive

(it was not), Roggeman did not comply with it. The record does not support Roggeman's contention that the ULJ improperly restricted the scope of his testimony.

Roggeman contends that he should have been granted a new hearing. A ULJ will not consider new evidence submitted after the evidentiary hearing unless there is good cause for failing previously to present evidence that would likely change the outcome of the decision, or the evidence would likely show that the information provided at the earlier hearing was false and the false information affected the outcome. Minn. Stat. § 268.105, subd. 2(c) (2006). When Roggeman requested reconsideration, he submitted new evidence and asked the department to subpoena documents from Shaky Town's liability insurer to challenge Shaky Town's assertion that Roggeman's logbook violations affected Shaky Town's insurance. Roggeman did not ask the ULJ to subpoena these documents before the hearing, and gave no explanation in his request for reconsideration for his failure to do so. Roggeman should have predicted Shaky Town's insurance-premium argument because Roggeman previously submitted a letter acknowledging that Shaky Town claimed to have discharged him because of Roggeman's impact on Shaky Town's insurance.

Roggeman also did not explain how his newly submitted documents would likely change the outcome of the decision. The new evidence includes his cell phone records, his request for unemployment insurance, and a report indicating that Shaky Town removed him from its insurance on April 10, 2007. Although this evidence challenges the testimony of Shaky Town's witness, it does not follow that the allegedly false testimony affected the decision. Whether or not Roggeman's failure to maintain his logbook actually impacted

Shaky Town's insurance costs, it constituted employee misconduct for the safety reasons already discussed.

Affirmed.