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STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1588

Kristine Austin,
Relator,

vs.

Minnehaha Falls Corporation,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed July 22, 2008
Affirmed
Stoneburner, Judge

Department of Employment and Economic Development
File No. 7596 07

Kristine Austin, 5417 Unity Avenue North, Crystal, MN 55429-3265 (pro se relator)

Minnehaha Falls Corporation, 3808 West 50th Street, Minneapolis, MN 55410-2018 (respondent)

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

Considered and decided by Worke, Presiding Judge; Lansing, Judge; and Stoneburner, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Relator challenges the determination of an unemployment law judge (ULJ) that her employment at respondent-employer's restaurant was terminated for misconduct and that therefore she is disqualified from receiving unemployment benefits. Because the record supports the ULJ's determination, we affirm.

DECISION

An employee who is discharged because of employment misconduct is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2006). 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). Employment misconduct does not include "a single incident that does not have a significant adverse impact on the employer." *Id.*

On certiorari review, we will not disturb the ULJ's decision unless it is based on unlawful procedure, legal error, insubstantial evidence with respect to the entire record, or unless it is arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d)(3)-(6) (2006). "We view the ULJ's factual findings in the light most favorable to the decision." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But "[w]hether a particular act constitutes disqualifying misconduct is a question of law, which this court reviews de novo." *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

Relator Kristine Austin argues that she "was discharged for a single incident, without even a warning," for telling a co-worker that the co-worker "could be a real b***h at times." But Maureen Pearson, one of the owners of respondent Minnehaha Falls Corporation, d/b/a Pearson's Edina Restaurant (the restaurant), testified that Austin's use of profanity toward a co-worker was merely the last incident of a series of incidents in which Austin demonstrated a poor attitude and disruptive behavior, including three incidents in 2006—making inappropriate statements at work, leaving the premises during a shift, and arriving late and refusing to cooperate—and two incidents in 2007—speaking poorly of a co-worker, and refusing to work and later lying to management about it. Maureen Pearson and restaurant manger Phillip Pearson testified that each of them spoke with Austin on separate occasions regarding her behavior.

During the telephone hearing held before the ULJ, Austin conceded that, approximately one year prior to the incident involving profanity that precipitated her immediate discharge, she had received and signed a formal written warning that she would be discharged if she caused "[a]ny further problems with attitude, behavior, inappropriate conversation, [or] excessive conversation." But Austin denied that any of the additional incidents and reprimands that the Pearsons testified to had occurred. The ULJ did not make any findings regarding credibility and did not make any findings about the disputed incidents. The ULJ found, referencing the undisputed written warning, that Austin "had been warned that inappropriate conversation and a poor attitude would lead to her dismissal," and that by using profanity to a co-worker in a manner meant to degrade the co-worker, Austin violated "the standards of behavior an employer may

reasonably expect from its employees." We conclude that the record supports the ULJ's determination. *See Skarhus*, 721 N.W.2d at 344 (stating that this court will not disturb the ULJ's findings if they are supported by substantial evidence).

Austin argues that she was entitled to another warning before she was fired, because she did not know she risked immediate discharge by calling another co-worker a "b***h." But the restaurant has a written policy that an employee's job may be terminated if he or she performs unsatisfactorily, is insubordinate, disrespects customers or staff, uses profanity, or continually violates policies. The restaurant provided a copy of this policy to Austin with her application for employment. The evidence supports the Pearsons' testimony that they had discussed their expectations regarding adherence to the policy with Austin during her employment. And the record demonstrates that Austin's previous interaction with co-workers had been sufficiently serious to result in a written warning, so this last incident was not a single incident of disrespectful behavior.

An employee who refuses to abide by an employer's reasonable policies and who continues to conduct herself in a manner contrary to the employer's stated requests commits disqualifying misconduct. *Schmidgall*, 644 N.W.2d at 804, 806-07. We reject Austin's assertion that the Pearsons' failure to give her another warning before her discharge precludes a determination that her use of profanity in violation of the restaurant's policy was not disqualifying misconduct.

Affirmed.