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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1097**

Sanjeeb Shrestha,  
Relator,

vs.

Allina Health System,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed February 16, 2010  
Affirmed  
Halbrooks, Judge**

Department of Employment and Economic Development  
File No. 2192611-3

Sanjeeb Shrestha, Minneapolis, Minnesota (pro se relator)

Allina Health System, Minneapolis, Minnesota (respondent)

Lee B. Nelson, Amy R. Lawler, Minnesota Department of Employment and Economic  
Development, St. Paul, Minnesota (for respondent Department of Employment and  
Economic Development)

Considered and decided by Lansing, Presiding Judge; Halbrooks, Judge; and  
Schellhas, Judge.

## UNPUBLISHED OPINION

**HALBROOKS**, Judge

In this certiorari pro se appeal, relator Sanjeeb Shrestha challenges a determination by the unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he was terminated from respondent Allina Health System for aggravated employment misconduct. Relator argues that the ULJ erred by refusing to order a second evidentiary hearing to receive evidence related to alleged errors at relator's criminal trial. Because we conclude that the ULJ did not abuse its discretion by denying relator's request for a second evidentiary hearing, we affirm.

### FACTS

Relator was employed by Allina Health System beginning in February 2005, and worked as a nursing assistant at Abbott Northwestern Hospital. On July 31, 2008, relator was arrested for inappropriately touching a vulnerable adult patient. During the police investigation, relator was placed on unpaid administrative leave, and he set up an unemployment-benefit account with respondent Minnesota Department of Employment and Economic Development (DEED). Relator was subsequently charged with fourth-degree criminal sexual conduct, a felony offense. On September 18, 2008, relator was discharged from his employment at Allina due to these criminal charges. In February 2009, DEED determined that relator was ineligible for benefits beginning July 2008, because relator was discharged for aggravated employment misconduct. In March 2009, relator was found guilty of fourth-degree criminal sexual conduct. He then appealed DEED's ineligibility determination.

Both relator and Kim Drennen, a human-resources representative for Allina, testified at the hearing before the ULJ. Drennen testified that relator was terminated because he was charged with fourth-degree criminal sexual conduct. Relator testified that he was innocent,<sup>1</sup> but acknowledged that he had been found guilty of the charged crime.

The ULJ determined that relator is ineligible for unemployment benefits because he was terminated for aggravated employment misconduct. The ULJ specifically found that relator “was discharged after he was arrested and charged with fourth degree criminal sexual conduct. He has since been found guilty on those charges.” Furthermore, because the conduct occurred while on the job and with a patient, the ULJ found that the conduct had a significant adverse effect on the employer.

Relator requested reconsideration and submitted a DNA test related to his criminal case. The ULJ denied an additional evidentiary hearing. The ULJ reasoned that relator failed to demonstrate good cause for not introducing the DNA test results at the initial hearing. Furthermore, the ULJ concluded that the new evidence would not demonstrate the falsity of any evidence submitted at the initial hearing. Specifically, the ULJ stated that “[relator] had a trial where he was found guilty of fourth degree criminal sexual conduct and the [ULJ] will not dispute that conviction.” The ULJ affirmed its earlier ineligibility determination, and this certiorari appeal follows.

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<sup>1</sup> Relator is currently appealing his conviction.

## DECISION

On review, this court may affirm a ULJ's decision, remand it for further proceedings, or reverse or modify it

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 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) (2008). “This court views the ULJ’s factual findings in the light most favorable to the decision. This court also gives deference to the credibility determinations made by the ULJ. As a result, this court will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008) (citations omitted), *review denied* (Minn. Oct. 1, 2008).

The ULJ determined that relator is ineligible for benefits because he was discharged for aggravated employment misconduct. An applicant is ineligible for unemployment benefits if he or she is discharged due to aggravated employment misconduct. Minn. Stat. § 268.095, subd. 6a (2008). “If an applicant is convicted of a gross misdemeanor or felony for the same act for which the applicant was discharged, it is aggravated employment misconduct if the act substantially interfered with the employment or had a significant adverse effect on the employment.” *Id.*, subd. 6a(b). It

is undisputed that relator was discharged because of his criminal charges arising out of an incident with a patient, and it is further undisputed that relator was found guilty of the felony charge of fourth-degree criminal sexual conduct for that same act. Relator does not dispute the finding that this act had a negative adverse impact on his employer.

Relator instead challenges the ULJ's decision to deny his request for a second evidentiary hearing to receive a DNA test result. A ULJ's decision to deny a request for an additional evidentiary hearing will not be reversed absent an abuse of discretion. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006).

The [ULJ] must order an additional evidentiary hearing if an involved party shows that evidence which was not submitted at the evidentiary hearing: (1) would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence; or (2) would show that the evidence that was submitted at the evidentiary hearing was likely false and that the likely false evidence had an effect on the outcome of the decision.

Minn. Stat. § 268.105, subd. 2(c) (2008).

Relator argues that "it did not occur to him that DNA test results may have been an important piece of evidence in deciding his case." Relator also asserts that he "believes that this evidence would likely change the outcome of the decision." But this new evidence would not change the fact that relator was found guilty beyond a reasonable doubt of criminal sexual conduct. Moreover, the DNA test results would not demonstrate that any evidence submitted at the evidentiary hearing was false. Relator admitted to being found guilty of fourth-degree criminal sexual conduct, and the DNA evidence does nothing to alter that fact. Furthermore, we can find no authority for the

proposition that the ULJ may disregard a conviction based on evidence submitted at an evidentiary hearing during a benefits dispute. We therefore conclude that the ULJ did not abuse its discretion in denying relator's request for an additional evidentiary hearing.

**Affirmed.**