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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1188**

Wayne Nelson,
Relator,

vs.

Gales Auto Body Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 6, 2010
Affirmed
Toussaint, Chief Judge**

Department of Employment and Economic Development
File No. 21914157-3

Wayne Nelson, Braham, Minnesota (pro se relator)

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respondent Gales Auto Body Inc.)

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

Considered and decided by Toussaint, Chief Judge; Kalitowski, 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UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Relator Wayne Nelson challenges the decision of the unemployment-law judge (ULJ) that he was ineligible for unemployment benefits because he was discharged for employment misconduct. Nelson contends that he did not engage in misconduct in the incident leading to his discharge. We affirm.

DECISION

This court will affirm the decision by the ULJ unless the decision is erroneous as a matter of law or is not supported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2008). We will “view the ULJ’s factual findings in the light most favorable to the decision” and defer to the ULJ’s credibility determinations. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But we review questions of law independently. *Id.*

Respondent employer Gales Auto Body Inc. is an auto-body repair shop that gets most of its business from insurance companies. During an audit, one of these insurance companies discovered that Nelson had charged it for repairs on a particular vehicle that he had not performed. This insurance company—which brought in about 25% of Gales Auto’s business—placed Gales Auto on probationary status, warning that if another such incident occurred, it would stop doing business with Gales Auto. Gales Auto discharged Nelson because he fraudulently accepted pay for repairs that he did not perform.

We first address Nelson's challenges to several of the ULJ's findings of fact. The ULJ found that, although Nelson performed the repair on the vehicle at issue in a materially and significantly different way from the insurance company's work order, he failed to follow Gales Auto's directive that, in such a situation, he must report this to a supervisor and amend the work order so that the insurance company would not be charged for a procedure not performed. While Nelson does not dispute that he did not report his method of repair to the supervisor so that the work order could be changed accordingly, he essentially argues that it was unnecessary because, as he testified, he performed the repair as required but did so in a more efficient manner, which is permissible. In contrast, Gales Auto testified that Nelson failed to perform the repair as required by the insurance company, as well as the manufacturer's recommendations for that type of vehicle, and consequently did not do the repairs properly. The ULJ's decision has substantial support in the record, and we defer to the ULJ's credibility determinations.

Next, the ULJ found that Nelson also claimed time worked for a specific repair task that he did not perform. Nelson acknowledges that he did not perform this specific repair task but explains that it did not need to be performed due to the alternative method he used to perform the repair. He also acknowledges that he neglected to inform his supervisor and amend the work order, but he explains that this was due to mere oversight on his part. The ULJ rejected this innocuous explanation, finding that Nelson was an experienced technician who knew which short cuts he could take to save the most time

and make more money for himself. Again, this finding was supported by substantial evidence in the record, and we defer to the ULJ's credibility determinations.

We next review the ULJ's determination that Nelson committed misconduct. An employee who is discharged for misconduct is not eligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008). 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." Minn. Stat. § 268.095, subd. 6(a) (2008).

The ULJ ruled that Gales Auto had the right to reasonably expect Nelson would not claim time worked for repairs he did not actually do or that deviated significantly and materially from a work order. Further, the ULJ found that Nelson knew that, if he was able to skip a task or perform a repair in a significantly or materially different way, he had to have the work order amended accordingly. The ULJ ruled that Nelson engaged in a calculated risk, acting intentionally, and displaying clearly a serious violation of the standards of behavior his employer had the right to expect of him. Nelson contends that this is error and that he was discharged merely for failing to follow a procedure, not for intentional neglect.

"[A]n employee's decision to violate knowingly a reasonable policy of the employer is misconduct." *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 806 (Minn. 2002). Fraudulent billing of a customer for services not performed also constitutes

misconduct. *Frank v. Heartland Auto. Servs., Inc.*, 743 N.W.2d 626, 630 (Minn. App. 2008). Where Nelson both violated Gales Auto's known, reasonable policy and fraudulently billed a customer for services not performed, the ULJ correctly ruled that misconduct occurred as a matter of law.

Nelson also argues that this repair incident was too minor an event to base his termination on and asserts that the owner discharged him out of anger. "[A] single incident that does not have a significant adverse impact on the employer" does not constitute employment misconduct. Minn. Stat. § 268.095, subd. 6(a). As the ULJ ruled, if Nelson's conduct is considered a single incident, it had an adverse effect on Gales Auto for two reasons. First, Nelson could no longer be trusted to complete tasks as assigned or to properly claim time for work performed. *See Frank*, 743 N.W.2d at 630-31 (holding that fraudulent billing of automotive customer had significant adverse impact on employer, because it undermined employer's ability to assign essential tasks to employee and employer could no longer "reasonably rely on the employee to manage the business's financial transactions"). Second, the ULJ found that this incident seriously jeopardized Gales Auto's relationship with the insurance company that brought in about 25% of Gales Auto's business, as demonstrated by the fact that it put Gales Auto on probation after the audit. We agree that for both of these reasons, Nelson's actions had a significant adverse impact on Gales Auto.

Finally, to the extent that Nelson cites additional facts included in his request for reconsideration, we defer to the ULJ's decision that Nelson did not meet the standards for

ordering an additional evidentiary hearing. *See* Minn. Stat. § 268.105, subd. 2(c) (2008) (setting out standards for ordering additional evidentiary hearing); *Yswsf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007) (deferring to ULJ's decision regarding holding additional evidentiary hearing).

Affirmed.