STATE OF MINNESOTA
IN COURT OF APPEALS
A10-181

Ulrich Hoefler,
Relator,

vs.

Healthworks Home Medical, Inc.,
Respondent,

Department of Employment and
Economic Development,
Respondent.

Filed November 2, 2010
Affirmed
Hudson, Judge

Department of Employment and
Economic Development
File No. 23361479-3

Thomas H. Boyd, William T. Peffer, Winthrop & Weinstine, P.A., Minneapolis, Minnesota (for relator)

Healthworks Home Medical, Inc., Roseville, Minnesota (respondent)

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

Considered and decided by Larkin, Presiding Judge; Peterson, Judge; and Hudson, Judge.

U N P U B L I S H E D O P I N I O N

HUDSON, Judge

In this certiorari appeal, relator challenges the decision of an unemployment-law judge (ULJ) that his refusal to report to work constituted employment misconduct, arguing that an agreement with his supervisor allowed him to miss work to accept occasional union jobs. Because substantial evidence supports the ULJ's determination that the agreement did not apply if the employer needed relator to report to work and because relator committed employment misconduct by intentionally refusing to come to work, we affirm.

FACTS

Relator Ulrich Hoefler worked full-time as a transportation driver and then delivery driver for respondent Healthworks Home Medical, Inc. (Healthworks) from May 2006 until his discharge on August 27, 2009. At the time of his discharge, Hoefler's job duties included delivering medical supplies to patients in their homes. In 2008, a Healthworks supervisor agreed to allow Hoefler occasional days off to accept part-time, day-long jobs offered through the stagehands union to set up or take down for concerts or events. Hoefler's supervisor understood that if Hoefler could not accept a certain call for a union job, he would be placed further down the job-call list, and he would eventually receive no further calls. Hoefler took advantage of that agreement and missed work at Healthworks to work a union job on average about two days per month.

Hoefler was absent from work on August 25 and 26, 2009 because of illness. On August 26, he called his supervisor and stated that he would be taking the next day off to

work at a union job. The supervisor told Hoefler that, because he had missed the last two days of work, Healthworks was running behind in its deliveries, and Hoefler was required to come in to work on August 27. Hoefler told the supervisor that he had already accepted the union job and could not reverse the decision to work that job. The next day, Hoefler went to the union job and not to his Healthworks employment. He was then discharged.

Hoefler applied for unemployment-compensation benefits with respondent Minnesota Department of Employment and Economic Development (DEED), and a department adjudicator determined that Hoefler was ineligible for benefits. Hoefler appealed that determination, and, after a hearing, a ULJ affirmed the denial of benefits on the ground that Hoefler had engaged in employment misconduct. On reconsideration, the ULJ affirmed that decision. This certiorari appeal follows.

D E C I S I O N

This court reviews a ULJ's decision to determine whether the relator's substantial rights were prejudiced because the findings, inferences, conclusion, or decision are unsupported by substantial evidence in view of the record as a whole or affected by an error of law. Minn. Stat. § 268.105, subd. 7(d) (2008). This court views factual findings in the light most favorable to the decision and defers to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But whether an employee is ineligible to receive unemployment benefits is a question of law, which this court reviews de novo. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008). Employment misconduct is "any intentional, negligent, or indifferent conduct, on the job or off the job that displays clearly: (1) a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee; or (2) a substantial lack of concern for the employment." *Id.*, subd. 6(a) (Supp. 2009). Employment misconduct does not include inefficiency or inadvertence, simple unsatisfactory conduct, poor performance because of inability or incapacity, or good-faith errors in judgment. *Id.*, subd. 6(b)(2), (3), (5), (6) (Supp. 2009).

An employer may establish and enforce reasonable rules governing employee absences. *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 28 (Minn. App. 2007). The ULJ determined that Hoefler was discharged for his refusal to report to work on August 27, which constituted employment misconduct. An employee's knowing violation of an employer's reasonable policy or refusal to meet an employer's reasonable requests constitutes employment misconduct. *Schmidgall*, 644 N.W.2d at 806–07; *Sandstrom v. Douglas Mach. Corp.*, 372 N.W.2d 89, 91 (Minn. App. 1985); *cf. Tuckerman Optical Corp. v. Thoeny*, 407 N.W.2d 491, 493 (Minn. App. 1987) (concluding that an employee's good-faith misunderstanding of rules or policies does not constitute employment misconduct). The reasonableness of an employer's request depends on the circumstances. *Sandstrom*, 372 N.W.2d at 91. Here, the supervisor's request was reasonable because it directly related to Hoefler's duty of delivering home

medical supplies and was based on the delivery back-up caused by Hoefler's absence the previous two days.

Hoefler argues that because his supervisor previously agreed to allow him to miss occasional work days to accept union jobs, his intentional failure to report to work on August 27 reflects only a misunderstanding of that agreement and does not constitute employment misconduct. But the ULJ credited the supervisor's testimony that, although Healthworks had a "gentleman's agreement" with Hoefler that he could take time off for union work, that agreement only applied if Healthworks did not need him to work on a given day. We defer to the ULJ's credibility determinations. *Skarhus*, 721 N.W.2d at 344. Moreover, irrespective of Hoefler's understanding of the agreement, his supervisor made it abundantly clear when they spoke on August 26 that he expected Hoefler to report to work on August 27. Hoefler chose to go to his union job instead.

Hoefler also argues that the single incident of his refusal to come to work on August 27 does not constitute employment misconduct. Whether an employee's behavior constituted a single incident "is an important fact that must be considered in deciding whether [his] conduct rises to the level of employment misconduct." Minn. Stat. § 268.095, subd. 6(d) (Supp. 2009).[1] The ULJ concluded that, "[e]ven though this is a single incident, it does constitute direct insubordination and is employment misconduct." We agree. "[A]n employee's intentional refusal to perform a task, as opposed to negligent forgetfulness" will support a determination of misconduct. *Vargas v. Nw. Area*

[1] Under the previous version of the relevant statute, the definition of employment misconduct excluded "a single incident that does not have a significant adverse impact on the employer." Minn. Stat. § 268.095, subd. 6(a) (2008).

Found., 673 N.W.2d 200, 207 (Minn. App. 2004), *review denied* (Minn. Mar. 30, 2004); *see also Daniels v. Gnan Trucking*, 352 N.W.2d 815, 816 (Minn. App. 1984) (stating that refusal to unload a truck was "a deliberate act of insubordination" constituting employment misconduct). Hoefler acknowledges that he intentionally failed to report to work on August 27, even after being told to do so. His refusal to comply with his supervisor's reasonable request and report to work, even though a single incident, was intentional conduct that showed "a substantial lack of concern for [his] employment." Minn. Stat. § 268.095, subd. 6(a)(2). The ULJ did not err by determining that Hoefler was ineligible to receive benefits based on employment misconduct.

Affirmed.