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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-888**

David Johnson,
Relator,

vs.

Range Mental Health Center, Inc.,
Respondent,

Department of Employment
and Economic Development,
Respondent.

**Filed January 11, 2011
Affirmed
Klaphake, Judge**

Department of Employment and Economic Development
File No. 23823449-3

David G. Johnson, Hibbing, Minnesota (pro se relator)

Range Mental Health Center, Inc. (respondent)

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

Considered and decided by Halbrooks, Presiding Judge; Klaphake, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Relator David G. Johnson challenges the decision of an unemployment law judge (ULJ) determining him to be ineligible for unemployment compensation benefits because of employment misconduct. Relator asserts both insufficiency of evidence and procedural errors in the proceedings.

Because the ULJ's decision is supported by substantial record evidence and relator's assertions of procedural error are not supported, we affirm.

DECISION

We may reverse a ULJ's decision if, among other things, it was "made upon unlawful procedure" or "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d) (2008). Relator seeks reversal of the ULJ's decision because (1) the determination is not supported by substantial evidence; (2) the employer's witnesses lacked credibility; and (3) the ULJ made procedural errors.

We review the ULJ's factual findings in the light most favorable to the findings and will not disturb them if they are supported by substantial evidence. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether the employee committed a certain act is a factual finding. *Id.* "But whether the act committed by the employee constitutes employment misconduct is a question of law, which we review de novo." *Id.*

Substantial Evidence

An employee who is discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008). “Employment misconduct” is defined as “intentional, negligent, or indifferent conduct, on or off the job that displays clearly . . . a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee.” *Id.*, subd. 6(a)(1) (Supp. 2009). The ULJ found that relator (1) became upset with his supervisor and accused her of belittling him when she conducted a review of his files, despite the fact that this was a standard procedure; (2) angrily confronted fellow staff members during a meeting about whether he had been seen driving when he was supposed to be ill; and (3) informed his supervisor that he would transport a client after being told not to do so. The ULJ concluded that relator acted in a confrontational or insubordinate manner and that the employer could reasonably expect an employee “will interact in an appropriate manner with co-workers and supervisors.”

Rudeness to fellow employees and insubordinate behavior can be considered employee misconduct. *Montgomery v. F & M Marquette Nat’l Bank*, 384 N.W.2d 602, 605 (Minn. App. 1986), *review denied* (Minn. June 13, 1986). Here, respondent Range Mental Health Center, Inc., included in its code of conduct for employees that

employees will be courteous to our clients, referral sources, and staff from other agencies and to each other. This includes interactions that occur on the phone, in writing or in person. Venting one’s anger or frustration at clients, referral sources and other staff members in inappropriate, damaging to relationships and give an unfavorable impression of both you and the Center.

Respondent offered transcripts of messages left on relator's supervisor's telephone and her summaries of conversations with relator, which support the ULJ's finding that relator was rude and confrontational.

Failure to follow an employer's reasonable policies and requests can also be employment misconduct. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). The ULJ found that the supervisor told relator not to transport a client to a doctor's appointment but that relator informed her that he would do so despite her directive. Although, ultimately, relator was discharged before he transported the client, he indicated to his supervisor that he would not follow her directive.

Relator also charges that the ULJ ignored telephone records that showed he did not make a voice call during the staff meeting, as respondent asserted, but he does not seriously dispute the other evidence. The factual findings of rudeness and insubordination, which are based on substantial evidence, support a legal conclusion of employment misconduct. The ULJ did not err by determining that relator was discharged for employment misconduct.

Credibility Findings

Relator further contends that respondent's witnesses were not credible. "When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the [ULJ] must set out the reason for crediting or discrediting the testimony." Minn. Stat. § 268.105. subd. 1(c) (Supp. 2009). The ULJ here did not make credibility findings, but the ULJ also did not rely on the credibility or lack of credibility of any witness in reaching his decision. Instead, the ULJ

based his decision on uncontradicted evidence: the confrontational voice messages, the comments at the staff meeting, and relator's statement that he intended to transport a client despite his supervisor's directive. These are undisputed facts, which do not require credibility findings, and which provide substantial support for its decision.

Procedural Issues

Relator contends that there were procedural problems with the evidentiary hearing and reconsideration. Specifically, relator argues the ULJ (1) improperly continued the hearing to a second day; (2) failed to consider cell phone records submitted by relator; (3) took longer than 30 days to issue his reconsideration order; and (4) made factual errors in his decision.

The evidentiary hearing need not conform to common law or statutory rules of evidence and procedure. Minn. Stat. § 268.105, subd. 1(b) (Supp. 2009). The purpose of the hearing is "an evidence gathering inquiry." *Id.* According to the transcript, the ULJ stated that the time allotted for the hearing had run and that there was enough testimony left that another block of time would be required. Given the discretion accorded the ULJ and relaxed rules of procedure, the fact that the hearing was continued did not affect the fairness of the hearing. Notably, one of relator's witnesses was not available at the January 12 hearing but was available at the January 29 hearing.

Relator asserts that the cell phone records he submitted were not available during the hearing, but the transcript reflects that the ULJ reviewed those records during relator's testimony. There may have been some confusion because the exhibit had been scanned into the ULJ's computer, but these records were admitted as Exhibit 25.

Relator argues that the ULJ took more than 30 days to issue his reconsideration order. Although this is true, it does not violate any rule or statute.

Finally, relator points out that the ULJ made factual errors in his order denying him unemployment benefits. Specifically, the ULJ was incorrect in the hours per day that relator worked and the date on which his supervisor reviewed relator's charts. As the ULJ pointed out in his order upon reconsideration, these slight factual inaccuracies had no bearing on the ultimate conclusion that relator had committed employment misconduct; relator's daily work schedule was not at issue and the basic facts of the confrontation between relator and his supervisor were correct, even if the date of the confrontation was not.

The ULJ's determination is supported by substantial evidence and is not affected by procedural error. We therefore affirm.

Affirmed.