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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0398**

Patrick Cammisuli,
Relator,

vs.

The Professional Garage Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed January 6, 2009
Affirmed
Bjorkman, Judge**

Department of Employment and Economic Development
File No. 350057-4

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The Professional Garage, Inc., 7391 Concord Street, Inver Grove Heights, MN 55076
(respondent employer)

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55101 (for respondent Department of Employment and Economic Development)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Bjorkman,
Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Relator challenges the unemployment-law judge's (ULJ) determination that he is ineligible to receive unemployment benefits because he was discharged for misconduct. Because the ULJ's decision is supported by substantial evidence in the record, we affirm.

FACTS

Relator Patrick J. Cammisuli worked full-time as a mechanic for respondent The Professional Garage, Inc. (the Garage) from November 9, 2006 through September 18, 2007. Thomas Zaspel and Donald LaValle co-own and manage the Garage. Cammisuli worked 40 to 50 hours per week and earned a commission for each work hour billed and collected.

Cammisuli was discharged from employment on September 18, 2007, after he left two cars he was assigned to work on unfinished over the weekend. Prior to that time, Cammisuli had also received repeated verbal warnings, as well as a written warning on September 6, 2007, regarding his unauthorized use of a cell phone for personal calls during work hours. He continued to use his cell phone at work after he received these warnings.

Cammisuli established an unemployment benefit account and respondent Department of Employment and Economic Development (DEED) determined that he was disqualified¹ from receiving benefits because he was discharged for failing to follow his

¹Before September 30, 2007, the unemployment benefits statute used the terms "disqualify" and "ineligible." 2007 Minn. Laws ch. 128, art. 5, § 1, at 974. However, for

employer's instructions—amounting to employment misconduct. Cammisuli appealed and a ULJ conducted an evidentiary hearing. The ULJ found that Cammisuli was ineligible for benefits because he was discharged due to misconduct. Cammisuli requested reconsideration and the ULJ affirmed its decision. This appeal by writ of certiorari follows.

D E C I S I O N

On appeal from a determination of ineligibility, we will affirm the ULJ's decision unless it derives from unlawful procedure, relies on an error of law, is unsupported by substantial evidence, or is arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d)(3)-(6) (Supp. 2007).

I. The ULJ conducted the proceeding in a manner that protected the parties' right to a fair hearing.

Cammisuli argues that the ULJ failed to ensure that all relevant facts were clearly and fully developed in the record because the hearing began late and was conducted in less than one hour. To establish that a reversal is warranted on this basis, a relator must show that his substantial rights were prejudiced by unlawful procedure or other error of law. Minn. Stat. § 268.105, subd. 7(d)(3)-(4).

By statute, “[t]he [ULJ] must ensure that all relevant facts are clearly and fully developed,” and must also assist pro se parties with the presentation of evidence. Minn.

all department determinations, appeal decisions, and other actions taking place on or after September 30, 2007, the term “ineligible” has been substituted for the term “disqualify” in Minn. Stat. §§ 268.01-.23; “[t]his substitution is not intended as a substantive change.” 2007 Minn. Laws ch. 128, art. 5, §§ 1, 10, at 974, 981. Here, DEED used the term “disqualified” in its initial determination, but the ULJ used the term “ineligible.”

Stat. § 268.105, subd. 1(b) (Supp. 2007); Minn. R. 3310.2921 (2007). Parties have a right to “present and examine witnesses and offer their own documents or other exhibits.” Minn. R. 3310.2921. But the procedure for unemployment-benefits hearings is less formal than court hearings. *See id.* (requiring only that the ULJ “exercise control over the hearing procedure in a manner that protects the parties’ rights to a fair hearing”). A ULJ may exclude evidence that “is irrelevant, immaterial, unreliable, or unduly repetitious.” Minn. R. 3310.2922 (2007).

The record does not support the claim that the ULJ conducted the hearing in a manner that prejudiced Cammisuli’s rights. Although the hearing started late because the ULJ was initially unable to reach Cammisuli by telephone, the record shows Cammisuli was able to present all the evidence he wanted during the hearing. The ULJ gave Cammisuli sufficient opportunity to present his version of events, including his own testimony and the testimony of other witnesses, and permitted Cammisuli to cross-examine the Garage’s witnesses and to state his position.

Cammisuli’s argument that the ULJ abused its discretion in limiting the testimony of Cammisuli’s mother is also unavailing. In attempting to challenge Zaspel’s credibility, Cammisuli asked his mother: “When you would come in and speak to Mr. Zaspel and Mr. LaValle, at any time would Mr. Zaspel start telling you his stories that seemed like tall tales because of intruths?” Cammisuli’s mother answered: “Yes. . . . Well, the tale that he told me that I doubted doesn’t really have anything to really do with this court case.” The ULJ interrupted this exchange, advising the parties that he would not hear additional testimony along these lines and that “[g]eneral character testimony is not going

to help me make a decision in this case.” The ULJ’s decision to limit this testimony was within its discretion to exclude immaterial or unreliable testimony. On this record, Cammisuli cannot show that his rights were prejudiced by unlawful procedure or other error of law.

II. Substantial evidence supports the ULJ’s findings of misconduct.

Cammissuli next argues the ULJ’s findings with regard to whether his behavior constituted employment misconduct are not supported by the record. “Employment misconduct means any intentional, negligent, or indifferent conduct . . . that displays clearly a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee, or . . . displays clearly a substantial lack of concern for the employment.” Minn. Stat. § 268.095, subd. 6(a) (Supp. 2007). Whether an employee committed a particular act is a question of fact. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). Whether a particular act constitutes employment misconduct, however, presents a question of law, which we review de novo. *Id.*

Here, the ULJ determined that Cammissuli committed misconduct based, in part, on its findings that Cammissuli: (1) spent a substantial amount of time on his cell phone during work hours even after his employers told him not to do so, and (2) failed to complete two repair projects assigned to him on September 14, 2007. Cammissuli contends these findings are not supported by the record. We address each finding in turn.

Cell phone use

Cammisuli first argues that the evidence does not support the ULJ's finding that he spent "a substantial amount of time at work on his cell phone" after the written warning on September 6, 2007, and that this use was "excessive[]." Cammisuli contends these findings are flawed because after the September 6 warning he reduced his cell phone usage to a "reasonable level."

But Cammisuli's argument misstates the appropriate inquiry regarding his cell phone use. As a general rule, an employee who refuses to abide by an employer's reasonable policies and requests commits misconduct. *Schmidgall v. Filmtec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). This is particularly true when the employee has received repeated warnings or instructions regarding the unacceptable conduct. *Id.* at 805-06.

Cammissuli received repeated warnings about his excessive cell phone use, including the written warning on September 6, which stated: "Do not use cell phone during working hours (discuss any deviations)." The language of the warning leaves no uncertainty; the Garage directed Cammissuli not to use his cell phone for personal calls during work hours unless he received permission. There is no record evidence that Cammissuli discussed any deviation from the cell phone prohibition with Zaspel or LaValle. Even assuming Cammissuli reduced his cell phone use to a "reasonable level," the record supports the ULJ's finding that Cammissuli did not comply with his employer's reasonable directives.

Further, Cammissuli's argument that the cell phone bill he submitted after the hearing "could indicate that some calls were placed and received during [his] breaks and

lunch hours,” fares no better. The photocopy of the bill (which is difficult to decipher because portions of it were apparently highlighted) appears to show incoming and outgoing cell phone calls that took place throughout work hours from September 1 through September 16. That Cammisuli may have placed “some” of these calls during his breaks does not defeat the ULJ’s finding that “[t]he bill does not show that Cammisuli was not using his cell phone excessively at work.”

Failure to complete assigned work on September 14

Cammissuli does not dispute the fact that he did not complete two repair projects assigned to him on September 14 but contends the ULJ erred in finding that he should have been able to complete them in 7.3 hours. But the ULJ’s finding is taken from Zaspel’s testimony. Zaspel stated that “[a] timing belt is 4.8 hours, warranty time is 1.9” and that axle seals would take “about two and-a-half hours.” He further testified that it was reasonable to expect a mechanic to “change a timing belt and water pump and replace axle seals . . . in a day.” The record supports the ULJ’s finding that Cammissuli could have reasonably completed the assigned work in one day.

III. The ULJ’s credibility determinations are supported by substantial evidence and are sufficiently detailed.

Cammissuli argues that the ULJ’s credibility findings are inadequate and that we should not defer to them. “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 that testimony.” Minn. Stat. § 268.105, subd. 1(c) (Supp. 2007). This court will affirm if “[t]he ULJ’s findings are

supported by substantial evidence and provide the statutorily required reason for [the] credibility determination.” *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007) (setting out factors to consider in making credibility determinations).

Under the factors outlined in *Ywswf* for making credibility determinations, the ULJ may consider whether the witness was frank and direct, seemed honest and sincere, and if the testimony is reasonable compared to other evidence. *Id.* Here, the ULJ found that “Cammisuli[’s] testimony contains some substantial inconsistencies. Zaspel and LaValle corroborate each other. Zaspel and LaValle describe a more likely chain of events than Cammisuli. Zaspel and LaValle are more persuasive witnesses than Cammisuli.” Cammisuli argues that these findings are inadequate because “[t]he ULJ did not cite any testimony by any of the witnesses in his conclusions about credibility and provided only general statements with regard to credibility.”

But Cammisuli cites no authority to support the proposition that a ULJ must provide such detailed credibility findings. The ULJ gave adequate reasons for its credibility determinations under *Ywswf* and the applicable provisions of the statute. We conclude that the ULJ’s findings are supported by substantial evidence in the record and deserve deference. *See Lamah v. Doherty Employment Group, Inc.*, 737 N.W.2d 595, 598 (Minn. App. 2007) (deferring to ULJ when “reviewing credibility and conflicting evidence”).

Affirmed.