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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-412**

Dan Krenz,
Relator,

vs.

Bunzl Minneapolis, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed November 23, 2010
Affirmed
Huspeni, Judge***

Department of Employment and Economic Development
File No. 23451054-3

Dan Krenz, Mounds View, Minnesota (pro se relator)

Bunzl Minneapolis, LLC, St. Louis, Missouri (respondent)

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

Considered and decided by Toussaint, Presiding Judge; Ross, Judge; and Huspeni,
Judge.

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HUSPENI, Judge

Relator Dan Krenz challenges the decision of the unemployment-law judge (ULJ) that relator is ineligible for unemployment benefits because he was discharged for misconduct. Because we defer to the ULJ's credibility determinations, because substantial evidence in the record supports the ULJ's findings, and because the ULJ properly ruled as a matter of law that relator engaged in employment misconduct, we affirm.

FACTS

Relator was employed as a warehouse worker for respondent Bunzl Minneapolis, LLC. He was discharged after a September 4, 2009 incident involving a coworker. On that day, both relator and his coworker were moving pallets and boxes, using motorized "cherry-picker" forklifts. Relator left a pallet in front of a door, and when he saw his coworker moving it, a dispute arose. According to relator's version, he followed his coworker to find out where he was taking the pallet; his coworker then braked abruptly, and relator's forklift accidentally bumped into his coworker's forklift. Relator got off his forklift and saw his coworker extend his arm out as if to hit him and relator then pushed his coworker's arm up in the air.

Under the coworker's version, relator chased him while both were on their forklifts and intentionally ran into his forklift. Relator then approached him and grabbed him by the throat, and bruises later appeared on his neck. The coworker reported the bruises to the warehouse manager a few days later, and his fiancée, who did not have

advance notice that she would be called to testify, reported that the coworker told her about the incident, and that she saw bruises on his neck.

The ULJ found that the coworker's version of events was more credible than relator's, determined that relator had been discharged for employment misconduct, and ruled that he was ineligible for unemployment benefits. The ULJ affirmed on reconsideration. This certiorari appeal followed.

D E C I S I O N

When reviewing the decision of a ULJ, this court may affirm the decision, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced by, among other things, an error of law or findings that are unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2008). “Whether an employee committed employment misconduct is a mixed question of fact and law.” *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). “We view the ULJ’s factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. In doing so, we will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted). “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 unemployment law judge must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1(c) (Supp. 2009). This court reviews the ULJ’s conclusions of law *de novo*. *Skarhus*, 721 N.W.2d at 344.

Relator challenges the ULJ's decision to credit the version of events put forth by his coworker, rather than relator's version of events. In making his credibility determinations in the initial order finding relator ineligible for benefits, the ULJ noted that the only witness to the incident—other than relator and his coworker—did not testify but did provide a written statement that he saw relator choking his coworker. The ULJ also cited testimony by the warehouse manager that the coworker called him to report that he had bruises from the incident. In addition, the ULJ cited the testimony of the coworker's fiancée that she saw marks on his throat area after the day of the incident.

In his order affirming on reconsideration, the ULJ explained his credibility determinations in more detail. He cited the testimony by the coworker's fiancée as particularly credible and as being the least biased of all of the witnesses, because the fiancée was called without notice and was not prompted to answer the questions in any way. Further, the ULJ addressed the fact that no bruises could be seen on the coworker at the time of the incident by noting that it was common for bruising not to be visible until sometime after the trauma occurred. Given the evidence that corroborated the coworker's claim, the ULJ found that relator grabbed the coworker by the throat. The ULJ further explained that this credibility determination made relator's claim that he rammed into his coworker's forklift accidentally less credible. In conclusion, because we defer to the ULJ's credibility determinations and because the findings are supported by substantial evidence in the record, we affirm these findings.

Relator also specifically challenges his coworker's credibility on several grounds, including the coworker's alleged disciplinary history and other matters not testified to at

the evidentiary hearing. The ULJ addressed this argument on reconsideration and held that the coworker's disciplinary history was largely irrelevant; that relator could have raised it during the hearing; and that regardless of the coworker's disciplinary history, the preponderance of the evidence showed that relator reacted inappropriately in the incident. We again agree with the ULJ.

Relator also contends that once he started receiving unemployment benefits, the employer "changed its story" about why he was terminated, in an effort to avoid the increase in its future tax rate that would occur if relator received unemployment benefits. *See* Minn. Stat. § 268.051, subd. 2(a) (2008) (providing that future tax rate of employer is affected by its experience rating). This argument by relator has no merit. When relator was discharged, the employer told him it was for gross misconduct based on safety concerns because he used the forklift as a weapon in the incident. The testimony at the hearing focused more on whether or not relator choked his coworker after running into his forklift. First, it is undisputed that relator was discharged because of the entire incident and the exact label used in his discharge is of no consequence. Second, the ULJ found both that relator deliberately drove into his coworker's forklift and that he then grabbed the coworker by his throat.

The ULJ determined, based on his findings, that the relator was discharged for employment 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 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.” Minn. Stat. § 268.095, subd. 6(a) (Supp. 2009). The ULJ stated that “[a]n employer can reasonably expect employees will not act out violently against other employees.” The ULJ ruled that when relator hit his coworker’s forklift with his own forklift, and “then grabbed [the coworker] by the throat,” relator’s “actions displayed a serious violation of the standards of behavior that [the employer] had a right to reasonably expect.” Consequently, the ULJ’s application of the law to the facts and the determination that relator was discharged for employment misconduct and was ineligible to receive unemployment benefits are correct.

Affirmed.