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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1129**

Hans-Juergen Huck,
Relator,

vs.

Jonti-Craft, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 30, 2012
Affirmed
Johnson, Chief Judge**

Department of Employment and Economic Development
File No. 26760274-3

Hans-Juergen Huck, Corpus Christi, Texas (pro se relator)

Jonti-Craft, Inc., c/o Larkin Hoffman Daly & Lindgren, Minneapolis, Minnesota
(respondent)

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

Considered and decided by Connolly, Presiding Judge; Johnson, Chief Judge; and
Randall, Judge.*

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

UNPUBLISHED OPINION

JOHNSON, Chief Judge

Jonti-Craft, Inc., terminated the employment of Hans-Juergen Huck because he repeatedly verbally abused his co-workers, made and received excessive personal telephone calls while on the job, and failed to copy his supervisor on e-mail messages. An unemployment law judge determined that Huck is ineligible for unemployment benefits because he was terminated for employment misconduct. We affirm.

FACTS

Jonti-Craft is a manufacturer of wooden children's furniture. Huck worked for Jonti-Craft as director of engineering from January 2004 until his termination on December 16, 2010.

Huck received several warnings about his workplace behavior during the last two years of his employment at Jonti-Craft. On December 3, 2009, human relations director Neil Dolan gave Huck a written warning after one of Huck's subordinates complained that Huck had been verbally abusive and demeaning toward her. Huck denied the allegations.

On October 26, 2010, Dolan gave Huck a verbal warning after receiving and investigating complaints that Huck yelled at and intimidated his co-workers and generally created a stressful environment in the office. Dolan determined that on one occasion, Huck caused a co-worker to leave her desk and hide in a restroom. Another member of the engineering department was so fearful of Huck that he occasionally left work early with nausea. Huck again denied his colleagues' allegations.

Also on October 26, 2010, Dolan gave Huck a written warning concerning excessive personal telephone calls during working hours. Jonti-Craft's telephone records show that Huck made or received 455 personal calls during the first eight months of 2010. Huck disagreed with the warning on the ground that he had entered into an oral agreement at the time of his hiring that permitted him to make personal telephone calls on company time. Dolan testified that he was unaware of any such agreement and further testified that, even if such an agreement existed, Huck's telephone usage would be excessive.

During the same period of time, Huck engaged in insubordination. On September 22, 2010, Huck's supervisor, Dilip Chande, directed Huck to copy him on all e-mail messages to all persons outside their department. Huck subsequently failed to comply with this directive.

Huck's behavior toward his co-workers did not significantly improve after the October 26, 2010 warning. Huck also continued to receive numerous personal telephone calls while at work. On December 16, 2010, Dolan and Chande informed Huck that he was terminated.

Huck subsequently applied for unemployment benefits. The Department of Employment and Economic Development initially determined that Huck is eligible for such benefits. After Jonti-Craft filed an administrative appeal, an unemployment law judge (ULJ) conducted an evidentiary hearing on two days in March 2011. Four witnesses testified on behalf of Jonti-Craft: Dolan, Chande, and two of Huck's co-workers. Huck also testified. The ULJ noted that Jonti-Craft's witnesses "describe a

more likely chain of events than Huck” and “are more persuasive witnesses than Huck.” In his written decision, the ULJ determined that Huck had engaged in employment misconduct. The ULJ therefore concluded that Huck is ineligible for unemployment benefits. Huck requested reconsideration, but the ULJ affirmed his earlier decision. Huck appeals.

D E C I S I O N

Huck argues that the ULJ erred by determining that he engaged in employment misconduct. This court reviews a ULJ’s decision denying benefits to determine whether the findings, inferences, conclusions, or decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d) (2010). The ULJ’s factual findings are viewed in the light most favorable to the decision being reviewed. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). The ultimate determination whether an employee is eligible for unemployment benefits is a question of law, to which we apply a *de novo* standard of review. *Id.*

An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). The definition of employment misconduct includes “intentional, negligent, or indifferent conduct, on the job 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). “Determining whether a particular act constitutes disqualifying misconduct is a question

of law that we review *de novo*.” *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011).

In this case, the ULJ found that Huck engaged in employment misconduct in three ways. The evidence in the agency record supports the ULJ’s decision on each point.

First, the ULJ found that “Huck repeatedly raised his voice in criticism of his co-workers and the workers he supervised” and that “Jonti-Craft, Inc. had the right to expect Huck to treat his coworkers with civility and respect.” Inappropriate conduct directed at co-workers may be employment misconduct, especially if it affects the morale of other employees and causes dissension and disruption. *See Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 524 (Minn. 1989); *Auger v. Gillette Co.*, 303 N.W.2d 255, 257 (Minn. 1981); *Booher v. Transp. Clearings of Twin Cities, Inc.*, 260 N.W.2d 181, 183 (Minn. 1977). In *Booher*, for example, the supreme court held that an employee committed misconduct because her on-going confrontation with a co-worker caused discontent and tension in the workplace. 260 N.W.2d at 181-83. In this case, Huck’s behavior prompted Jonti-Craft to warn him twice to treat his co-workers with greater civility. But Huck did not heed the company’s warnings. Huck’s disrespectful conduct toward his co-workers constitutes “a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee.” *See* Minn. Stat. § 268.095, subd. 6(a)(1).

Second, the ULJ found that Huck continued “to conduct personal business on work phones after Dolan told Huck such personal use of the work phones was prohibited.” “[A]n employee’s decision to violate knowingly a reasonable policy of the employer is misconduct,” especially if “there are multiple violations of the same rule

involving warnings or progressive discipline.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 806-07 (Minn. 2002). In this case, Jonti-Craft’s policy on personal telephone calls states, “It is expected that personal calls will be kept to a minimum and limited to break/lunch times.” Huck does not claim that Jonti-Craft’s telephone policies are unreasonable. *See id.* at 804-05 (exploring reasonableness of company policy after relator raised issue). Instead, he claims that he received special telephone privileges when he was hired in 2004. But Dolan testified that he was not aware of such an agreement and that, even if such an agreement existed, Huck’s telephone usage was excessive. Furthermore, Huck continued to violate the telephone policy after Dolan’s October 26, 2010 warning. *See id.* at 806 (holding that knowing violation of employer’s reasonable policy was misconduct).

Third, the ULJ found that Huck failed to copy Chande on e-mails to others after being told to do so, which the ULJ determined was a violation of standards of behavior that Jonti-Craft had the right to expect and displayed a substantial lack of concern for his employment. Again, Huck does not challenge Jonti-Craft’s policy. *See id.* at 804-05. Huck instead argues that he never received a verbal or written warning about his failure to copy Chande. But for purposes of unemployment benefits, a warning is not required for an employee’s termination to be employment misconduct. *See Auger*, 303 N.W.2d at 257.

In his appellate brief, Huck’s argument consists mainly of attempts to contradict the ULJ’s findings of fact. However, “[c]redibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus*, 721 N.W.2d at 345.

For more than 50 years, the caselaw has prevented the appellate courts from re-weighing conflicting evidence in unemployment benefits cases. *See, e.g., Nyberg v. R.N. Cardozo & Bro., Inc.*, 243 Minn. 361, 364, 67 N.W.2d 821, 823 (1954). “While we may examine the evidence we can do so only for the purpose of determining whether it reasonably supports the decision.” *Id.*

Huck’s only remaining argument is that he “generally made a good-faith effort to perform” and that his “shortcomings as an employee were due to inadvertence, rather than a deliberate disregard for the employer’s expectations.” *See* Minn. Stat. § 268.095, subd. 6(b)(2), (6) (2010). This argument is not supported by the evidentiary record or the caselaw. The hearing transcript and the exhibits show that Huck repeatedly violated Jonti-Craft’s rules by treating his colleagues disrespectfully, by conducting personal business by telephone on company time, and by failing to copy his supervisor on e-mail messages. Huck’s repeated infractions despite Jonti-Craft’s warnings indicate that Huck engaged in intentional behavior that amounts to disqualifying employment misconduct. *See Schmidgall*, 644 N.W.2d at 806-07 (holding that multiple warnings and rule violations suggest knowing conduct). Furthermore, even conduct that is negligent or indifferent but not intentional may satisfy the statutory definition of employee misconduct. Minn. Stat. § 268.095, subd. 6(a).

In sum, the ULJ did not err by determining that Huck is ineligible for unemployment benefits because he was terminated for employment misconduct.

Affirmed.