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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0101**

Dereje F. Gulema,
Relator,

vs.

TSI, Incorporated,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed October 9, 2012
Affirmed
Larkin, Judge**

Department of Employment and Economic Development
File No. 28432611-3

Dereje Fisseha Gulema, San Francisco, California (pro se relator)

TSI, Incorporated, Shoreview, Minnesota (respondent)

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

Considered and decided by Larkin, Presiding Judge; Schellhas, Judge; and Collins,
Judge.*

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

UNPUBLISHED OPINION

LARKIN, Judge

In this certiorari appeal, relator challenges an unemployment-law judge's (ULJ) determination that he is ineligible to receive unemployment benefits because he was discharged from employment for misconduct. We affirm.

FACTS

Relator Dereje F. Gulema worked as an assembler for respondent-employer TSI, Incorporated from 2007 to 2011. TSI approved Gulema's request for time off from work between July 5 and 29, 2011, so Gulema could travel to Ethiopia. TSI informed Gulema, in writing, that his employment would be terminated if he did not return to work on August 1, 2011. Gulema did not report to work on August 1, 2, and 3, 2011. Gulema did not contact TSI to explain his absence. TSI contacted a person identified as Gulema's emergency contact. That person left a message for TSI on August 4, stating that Gulema was still in Ethiopia and that he had heard that Gulema had a "family emergency." On August 5, Gulema flew back to Minnesota from Ethiopia. He received a termination notice that had been mailed by TSI on August 4, indicating that he was considered to have abandoned his position on August 1. The notice stated that "[i]f there are any extenuating circumstances that prevented you from returning to work or notifying us of the reason for your continued absence, please notify us in writing no later than August 10, 2011." On August 10, Gulema left a voicemail message for TSI, indicating that he was unable to get to a phone because he was in the hospital and because it was expensive to make phone calls from Ethiopia.

Gulema established an unemployment-benefits account with respondent Minnesota Department of Employment and Economic Development (DEED). DEED issued a determination of ineligibility for unemployment benefits, after determining that Gulema is ineligible for unemployment benefits because he was discharged for employment misconduct. Gulema appealed the determination, and a ULJ held a de novo hearing. The ULJ decided that Gulema was discharged for employment misconduct and is therefore ineligible for unemployment benefits. Gulema requested reconsideration. After modifying the findings of fact and reasons for the initial decision, the ULJ affirmed his decision that Gulema was discharged for misconduct. Gulema brings this certiorari appeal.

D E C I S I O N

When reviewing the decision of a ULJ, we may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator may have been prejudiced because the findings, inferences, conclusion, or decision are “(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious.” Minn. Stat. § 268.105, subd. 7(d) (2010). Substantial evidence means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Minneapolis Van & Warehouse Co. v. St. Paul Terminal Warehouse Co.*, 288 Minn. 294, 299, 180 N.W.2d 175, 178 (1970) (quotation omitted).

An applicant who was discharged from employment because of employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). Employment misconduct is defined as “any intentional, negligent, or indifferent conduct, on the job or off of the job that displays clearly . . . a serious violation of the standards or behavior that the employer has the right to reasonably expect” or “a substantial lack of concern for the employment.” *Id.*, subd. 6(a)(1), (2) (2010).

Whether an employee committed employment misconduct “is a mixed question of fact and law.” *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted). “Whether the employee committed a particular act is a fact question, which we review in the light most favorable to the decision and will affirm if supported by substantial evidence.” *Dourney v. CMAK Corp.*, 796 N.W.2d 537, 539 (Minn. App. 2011). In doing so, we defer to the ULJ’s credibility determinations. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But “[d]etermining whether a particular act constitutes disqualifying misconduct is a question of law that we review de novo.” *Stagg*, 796 N.W.2d at 315.

Gulema makes three arguments in support of reversal. None is persuasive. First, Gulema seems to suggest that the transcript of the hearing before the ULJ has errors and that he sometimes “couldn’t understand” what was said or asked at the hearing. The transcript does not support this claim. Although DEED is required to provide an interpreter at the request of a party, Gulema never indicated that he did not understand what was said at the hearing, and he never asked for an interpreter. *See* Minn. R. 3310.2911 (2011) (“The department must provide an interpreter, when necessary, upon

request of a party.”). Moreover, although Gulema had difficulty framing his questions for TSI’s representative at the hearing and English obviously is not his first language, Gulema’s statements at the hearing indicate that he understood what was said. We are satisfied that Gulema received a fair hearing. *See Ywswf v. Teleplan Wireless Services, Inc.*, 726 N.W.2d 525, 529-30 (Minn. App. 2007) (finding that hearing was fair because there was “no indication that relator requested an interpreter, that she did not understand the proceedings, or that the ULJ did not understand her”).

Second, Gulema claims that his illness is “undisputable” and that he can prove, with witnesses, “that nobody is able to call from Ethiopia to the USA.” But Gulema made these arguments at the hearing before the ULJ, based on his own testimony, and the ULJ rejected them. The ULJ made an express determination that Gulema’s testimony was not credible. The ULJ found that Gulema’s testimony that he went to Ethiopia to “save money on medical procedures” and that he could not communicate with the employer by any means was “not credible because it is questionable and unsupported by the evidence.” The ULJ determined: “In short, it is more likely. . . that the primary reason. . . Gulema went to Ethiopia was for a vacation and not to save money on medical expenses.”

“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) (2010). “Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus*, 721 N.W.2d at 345. This court

will affirm a credibility determination if the ULJ's findings are "supported by substantial evidence and provide the statutorily required reason for her credibility determination." *Ywswf*, 726 N.W.2d at 533.

The record provides substantial support for the ULJ's credibility determination, and the ULJ set out the reasons for the credibility determination as required by statute. With regard to Gulema's claim that he could not communicate with his employer from Ethiopia, the ULJ cited to Gulema's testimony that phones with the capacity to connect to the United States were available, but that it was expensive to use the phones and there were long lines to access them. The ULJ noted that "[i]t is undisputed that Gulema did not attempt to communicate with anyone from TSI to inform them that he would not be working on August 1, 2011 or the days after." The ULJ also cited documentation from a doctor Gulema saw in San Francisco after returning from Ethiopia who noted that Gulema saw a doctor in Ethiopia, but also stated that "[a]s you are aware, [Gulema] was on vacation for the month of July." The ULJ reasoned that "the evidence [does not show] that Gulema missed work due to an illness and he provided no notice to the employer." In sum, the ULJ properly assessed Gulema's credibility.

Third, Gulema argues that the ULJ lacked "proof" that he "was able to call and notify his employer" from Ethiopia. But such proof is not required. The facts regarding Gulema's unexplained absence from work were in dispute, and the ULJ made a credibility determination to resolve the dispute. After weighing the testimony and other evidence, the ULJ did not believe Gulema's explanation. It is not the role of this court to reweigh the evidence on appeal. *See Whitehead v. Moonlight Nursing Care, Inc.*, 529

N.W.2d 350, 352 (Minn. App. 1995) (“When the parties have presented conflicting evidence on the record, this court must defer to the [ULJ’s] ability to weigh the evidence; we may not weigh that evidence on review.”); *see also Skarhus*, 721 N.W.2d at 344 (stating that this court defers to the ULJ’s determinations regarding witness credibility). Nevertheless, we observe that apart from Gulema’s claim to the contrary, there is no evidence that Gulema was prevented by illness from returning to work on August 1. Nor is there any evidence, apart from Gulema’s testimony, that he was completely unable to communicate with TSI from Ethiopia. Finally, Gulema acknowledges that he did not immediately contact TSI upon his return to the United States or communicate his “extenuating” circumstances in writing as requested by TSI. In view of the entire record as submitted, the findings, conclusions, and decision of the ULJ are supported by substantial evidence. *See* Minn. Stat. § 268.105, subd. 7(d).

“An employer has the right to establish and enforce reasonable rules governing absences from work.” *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 28 (Minn. App. 2007). “Refusing to abide by an employer’s reasonable policies generally constitutes disqualifying employment misconduct.” *Id.* Gulema’s failure to return to work on August 1 as expected, his unexcused absence from work on August 1, 2, and 3, and his failure to provide the written documentation that TSI requested to explain his absence constitute a serious violation of the standards of behavior that TSI had a right to reasonably expect of Gulema and showed a substantial lack of concern for the

employment. Thus, the ULJ did not err in concluding that Gulema was discharged for employment misconduct and is not entitled to unemployment benefits.

Affirmed.