

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1119**

William H. Paradise,
Relator,

vs.

Pool & Yacht, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed February 19, 2013
Affirmed
Kirk, Judge**

Department of Employment and Economic Development
File No. 29267962-3

William H. Paradise, St. Paul, Minnesota (pro se relator)

Pool & Yacht, Inc., St. Paul, Minnesota (respondent)

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

Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

KIRK, Judge

Relator challenges the determination of the unemployment law judge (ULJ) that relator was discharged for employment misconduct and, therefore, is ineligible for unemployment benefits. We affirm.

FACTS

Relator William H. Paradise worked part-time as a server for respondent Pool & Yacht, Inc. from September 2005 to January 28, 2012. In May 2011, Pool & Yacht's management established new "steps of service." On May 27, Paradise yelled and swore at his manager regarding the new procedures. On May 28, Paradise and his manager signed a written report, acknowledging that Paradise had "lost his temper . . . [including] yelling at his manager . . . [and] storming around the kitchen having a fit." The report stated that Paradise "will conduct himself in a professional manner at all times. He will not yell or raise his voice at his managers or coworkers. . . . Any other instances of disrespect, losing his temper or throwing a fit will result in further disciplinary actions up to and including termination."

Eight months later, on January 28, 2012, Paradise yelled and swore at a busser whom he felt was not doing her job. The busser, in tears, reported the incident to the manager. The manager investigated the incident and, at the end of Paradise's shift, discharged Paradise for "[h]is temper."

Paradise applied for unemployment benefits and the Minnesota Department of Employment and Economic Development (DEED) determined that Paradise is ineligible

to receive unemployment benefits because he was discharged for employment misconduct. Paradise appealed this determination. After a telephonic hearing, the ULJ concluded that Paradise is ineligible to receive unemployment benefits because he was discharged for employment misconduct. Following Paradise's request for reconsideration, a ULJ affirmed the decision.¹ This appeal followed.

D E C I S I O N

Paradise challenges the ULJ's determination that he was discharged because of employment misconduct. 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 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) (2012).

An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2012). Employment misconduct is "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

¹ Because the original ULJ was no longer employed by DEED, the Chief ULJ assigned the case to a different ULJ for reconsideration.

the right to reasonably expect of the employee; or (2) a substantial lack of concern for the employment.” *Id.*, subd. 6(a) (2012).

Whether an employee committed misconduct is a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether the employee committed a particular act is a question of fact, but whether the particular act committed constitutes employment misconduct is a question of law. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We view the ULJ’s factual findings in the light most favorable to the decision and will not disturb them on appeal when the evidence substantially sustains them. *Id.* But we review questions of law de novo. *Id.* Because credibility determinations are the exclusive province of the ULJ, we will not disturb such determinations on appeal. *Id.* at 345.

Paradise first challenges the ULJ’s credibility determinations. The ULJ specifically found “[t]he employer’s testimony was more credible than [Paradise’s], in the areas where the two diverged.”² Because we will not disturb a ULJ’s credibility determinations, Paradise’s first challenge is misplaced. *See id.*

Paradise next contends that several of the ULJ’s findings of fact “are not factual.” Specifically, Paradise argues that he did not swear at either the busser or his manager, and he did not ask his manager, “Who do you think you are?” But the manager testified

² As required by Minn. Stat. § 268.105, the ULJ explained that “[t]he employer’s testimony was persuasive and offered a more probable sequence of events.” *See* Minn. Stat. § 268.105, subd. 1(c) (2012) (“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.”).

that on May 27, 2011, Paradise yelled at her “about how ridiculous this is, he’s 40 years old, he’s been doing this for 25 years, who [does she] think [she is], that sort of thing,” and told her she could not “f---ing expect [them] to do this stuff.” The manager also testified that, on January 28, 2012, the busser reported Paradise was “yelling” and “screaming” at her, and “using the F word quite a bit.” The manager testified that she spoke with another employee who witnessed the incident, and the employee told her that he had seen Paradise “yelling” at the busser. Pool & Yacht also submitted a witness statement from the busser, which states that Paradise told the busser, in a raised voice, “Then you shouldn’t have been back here eating a f---ing yogurt or doing your texting or whatever!” According to the statement, the busser responded, “Yeah, maybe I should just take up smoking,” and Paradise yelled, “DO YOU KNOW HOW LONG I HAVE F-- -ING WORKED HERE? DO YOU KNOW HOW OLD I AM? HOW OLD ARE YOU? 17? YEAH. DO YOU WANT TO KNOW HOW OLD I AM?” Because the evidence substantially sustains the challenged findings of fact, we affirm the ULJ’s decision that Paradise was discharged for employment misconduct, and thus is ineligible to receive unemployment benefits. *See* Minn. Stat. § 268.105, subd. 7(d)(5); *see also* *Skarhus*, 721 N.W.2d at 344.

Affirmed.