

*This opinion will be unpublished and  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  
A13-1360**

Jeffrey Scott Davis,  
Relator,

vs.

Kaufman Enterprises, Inc. - Fairview Gardens,  
Respondent,  
Department of Employment and Economic Development,  
Respondent.

**Filed April 7, 2014  
Affirmed  
Stauber, Judge**

Department of Employment and Economic Development  
File No. 31003258-3

Jeffrey Scott Davis, Newport, Minnesota (pro se relator)

Kaufman Enterprises, Inc.-Fairview Gardens, Eagan, Minnesota (respondent employer)

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

Considered and decided by Halbrooks, Presiding Judge; Stauber, Judge; and  
Klaphake, Judge.\*

---

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

## UNPUBLISHED OPINION

**STAUBER**, Judge

In a certiorari appeal, relator argues that (1) the credibility determinations made by the unemployment-law judge (ULJ) were incorrect; (2) substantial evidence does not support the finding that he was intoxicated at work; (3) he did not admit to his employer that he was intoxicated; and (4) he never received any warnings regarding prior misconduct. We affirm the ULJ's determination that relator was ineligible for unemployment benefits because he was discharged for employment misconduct.

### FACTS

On March 12, 2013, relator Jeffrey Scott Davis was discharged from employment with respondent Kaufman Enterprises, Inc., based on allegations that he arrived at work intoxicated on the previous day. Kaufman Enterprises is a company that performs landscaping and snow-removal work. After he was discharged, relator applied for unemployment insurance benefits and was denied based upon "alcohol or drug-related behavior" constituting employment misconduct. Relator appealed, and a hearing was held by telephone with a ULJ. Relator's employer was represented by Robert Kaufman, the company owner. Three witnesses also testified on behalf of the employer: the operations manager; a foreman; and a laborer.

The operations manager testified that relator was expected to arrive at work on March 11, 2013 by 5:00 a.m., but did not arrive until around 6:30 a.m. Relator told him he was late because he "had been out all night drinking and didn't hear his phone." The operations manager, who had received training on how to recognize intoxication in

employees, observed that relator had “[s]lurred speech, bloodshot eyes, [and] acted real[ly] radical.” The operations manager sent relator home and wrote a description of the incident. He further testified that it would have been very dangerous for relator to work with company tools and equipment while intoxicated.

Two other witnesses testified that they observed that relator was intoxicated at work. The foreman testified that relator admitted to him that “he was out late drinking that night and that he was still drunk.” And the laborer testified that relator appeared to be intoxicated at work that day based upon his uncharacteristic behavior.

Kaufman testified that he terminated relator from his employment when he showed up to work the following day. He told relator that he was discharged because he came to work intoxicated. Kaufman testified that when he confronted relator about his drunkenness, relator admitted that he had been intoxicated at work.

Relator initially denied ever drinking alcohol on the evening of March 10, but later admitted that he had consumed “one or two” beers. Relator testified that he is “always up at 4:30, 5:00 in the morning,” but that on this particular morning he overslept. He denied oversleeping because he was intoxicated, stating that he “just slept real good or something” and also that he “didn’t feel very well” because of what he had eaten that evening. Relator stated that he was aware that coming to work under the influence of alcohol would be grounds for discharge. Relator testified that he believed he had been fired for coming to work late, and that he believes that the allegations about coming to work intoxicated were pretexts for eliminating his position so that the company could save money.

The ULJ issued a decision affirming the determination of ineligibility. The ULJ found that relator was “discharged for coming to work under the influence of alcohol.” The ULJ concluded that the testimony of relator’s employer and the employer’s witnesses was more credible because “[t]heir testimony was supported by each other, followed a logical chain of events, and was more plausible under the circumstances.” The ULJ also found that relator’s testimony was inconsistent because he “first testified that he did not drink alcohol, but later admitted to having one or two beers.” The ULJ concluded that relator’s conduct in coming to work intoxicated was “a serious violation of the employer’s reasonable expectations.” The ULJ also addressed relator’s contention that he was not intoxicated, concluding that relator’s self-contradictory testimony supported the conclusion that his contention was not credible. Following relator’s request for reconsideration, the ULJ affirmed her decision. This certiorari appeal followed.

## **D E C I S I O N**

When reviewing an unemployment insurance benefits decision, this court may affirm the decision, remand for further proceedings, reverse, or modify the decision if the relator’s substantial rights were prejudiced because the decision of the ULJ violated the constitution, was based upon unlawful procedure, was affected by error of law, was unsupported by substantial evidence, or was arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d) (2012). This court “review[s] the ULJ’s factual findings in the light most favorable to the decision.” *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted). This court “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). “Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law.” *Stagg*, 796 N.W.2d at 315 (quotation omitted). “Determining whether a particular act constitutes disqualifying misconduct is a question of law that we review de novo.” *Id.* (citation omitted). There is no burden of proof in unemployment-insurance proceedings and no presumption of entitlement to unemployment benefits. Minn. Stat. § 268.069, subd. 2 (2012). There is no equitable or common-law basis to allow or deny unemployment benefits. *Id.*, subd. 3 (2012).

The purpose of the unemployment-insurance program is to assist those who are unemployed through no fault of their own. Minn. Stat. § 268.03, subd. 1 (2012). The chapter is remedial in nature and must be applied in favor of awarding benefits, and any provision precluding receipt of benefits must be narrowly construed. Minn. Stat. § 268.031, subd. 2 (2012).

Relator argues that the testimony against him was not credible because his employer had “personal misgivings” about him, and that his employer’s version of events was fabricated as a pretext to dismiss him. But “[c]redibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006). The ULJ plainly stated her reasons for disbelieving relator’s testimony: the employer’s testimony and that of his witnesses was consistent, “followed a logical chain of events,” and was “more plausible under the circumstances;” relator’s testimony was inconsistent as to the amount of alcohol he had consumed; and relator could not adequately explain why he overslept if he

had not been intoxicated. *See* Minn. Stat. § 268.105, subd. 1(c) (2012) (requiring the ULJ to state the reasons for making a credibility determination where “the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision”). Therefore, the evidence in the record substantially supports the ULJ’s credibility determination.

Relator also argues that the evidence does not support the determination that he committed employment misconduct by coming to work intoxicated. Relator argues that “no evidence exists substantiating the accusations” since the statements of his employer and coworkers were “fabricated.” But the record contains ample evidence to support the ULJ’s conclusion that relator was intoxicated at work. Relator’s supervisor, who had received training in how to identify when an employee is intoxicated, observed that relator exhibited several signs of intoxication at work. Relator’s employer and two witnesses stated that relator admitted to them that he was intoxicated. Relator admitted to the ULJ that he had been drinking the night before, and then inexplicably failed to show up to work on time, even though he is “always up at 4:30.” On this record, there is substantial evidence to support the ULJ’s determination that relator was intoxicated at work in violation of his employer’s reasonable policy.

Relator also argues that he never admitted to anyone that he had been intoxicated, contrary to the testimony of his employer and two other witnesses. Relator states that “this admission never occurred because [he] was not under the influence the morning in question.” But this argument is an additional attempt to urge this court to disturb the ULJ’s credibility determination. *See Skarhus*, 721 N.W.2d at 345. The combined

testimony of relator's employer and two of his coworkers substantially supports the ULJ's finding that relator admitted he was intoxicated at work.

Finally, relator argues that the ULJ's determination was erroneous because he had never received any warnings, written or otherwise, regarding inappropriate work behavior. But there is no single-incident exception for employment misconduct. *See Potter v. N. Empire Pizza, Inc.*, 805 N.W.2d 872, 876 (Minn. App. 2011), *review denied* (Minn. Nov. 15, 2011). Rather, the fact that it was an isolated incident is "an important fact that must be considered;" however, the ULJ's determination need not "contain a specific acknowledgement or explanation" of that fact. Minn. Stat. § 268.095, subd. 6(d) (2012). Relator's supervisor made it clear that coming to work intoxicated was a serious safety hazard because relator worked with heavy machinery and could cause severe damage or injury if he was working while intoxicated. Moreover, relator admitted that he knew he could be discharged from his job for coming to work intoxicated. Therefore, coming to work even once while intoxicated constituted employment misconduct justifying relator's ineligibility for unemployment benefits.

**Affirmed.**