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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0766**

Katina D. Neal,
Relator,

vs.

Wells Fargo Bank NA,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 20, 2008
Affirmed
Kalitowski, Judge**

Department of Employment and Economic Development
File No. 1648 07

Katina D. Neal, 1410 Colorado Avenue South, #112, St. Louis Park, MN 55416 (pro se relator)

Wells Fargo Bank NA, c/o TALX Employer Services LLC, P.O. Box 1160, Columbus, OH 43216-1160 (respondent)

Lee B. Nelson, Katrina I. Gulstad, Department of Employment and Economic Development, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101-1351 (for respondent Department of Employment and Economic Development)

Considered and decided by Connolly, Presiding Judge; Kalitowski, Judge; and Minge, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Relator Katina D. Neal challenges her disqualification from receiving unemployment benefits, arguing that the unemployment law judge (ULJ) erred in determining that she was discharged for employment misconduct. We affirm.

DECISION

We will affirm a ULJ's determination unless the decision derives from unlawful procedure, relies on an error of law, is unsupported by substantial evidence, or is arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d)(3)-(6) (2006). The ULJ's factual findings will be viewed in the light most favorable to the decision. *See Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002) (addressing review of commissioner's representative). And because "[c]redibility determinations are the exclusive province of the ULJ," they will not be disturbed on appeal. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006). But we review questions of law de novo, including the question of whether an employee's acts constitute disqualifying misconduct. *Schmidgall*, 644 N.W.2d at 804.

An individual who was discharged because of employment misconduct is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2006). Employment misconduct is defined as

any intentional, negligent, or indifferent conduct, on the job or off the job (1) that displays clearly a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee, or (2) that displays clearly a substantial lack of concern for the employment.

Minn. Stat. § 268.095, subd. 6(a) (2006). But “a single incident that does not have a significant adverse impact on the employer,” or absence from work “because of illness or injury with proper notice to the employer” does not constitute employment misconduct. *Id.*

An employer has the right to expect that its employees will obey reasonable requests. *Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 206 (Minn. App. 2004), *review denied* (Minn. Mar. 30, 2004). If an employer makes a request that is “reasonable and does not impose an unreasonable burden on the employee, the employee’s refusal to abide by the request constitutes misconduct.” *Id.* Accordingly, we have recognized that continued tardiness, combined with several warnings, amounts to misconduct sufficient to disqualify an employee from receiving unemployment benefits. *Evenson v. Omnetic’s*, 344 N.W.2d 881, 883 (Minn. App. 1984).

Here, relator does not dispute that she engaged in an ongoing pattern of tardiness and was warned by her supervisor to improve her attendance. But relator claims that the ULJ’s legal determination that she engaged in employment misconduct was erroneous because the ULJ was prejudiced, failed to give adequate consideration to her proffered evidence, and relied on flawed documentation provided by respondent Wells Fargo.

By statute, the ULJ “must ensure that all relevant facts are clearly and fully developed,” and must also assist pro se parties with the presentation of evidence. Minn. Stat. § 268.105, subd. 1(b) (2006); Minn. R. 3310.2921 (2007). Parties have a right to “present and examine witnesses and offer their own documents or other exhibits.” Minn.

R. 3310.2921. But “[t]he order of presentation of evidence is determined by the unemployment law judge.” *Id.* Moreover, the procedure for unemployment-benefits hearings is less formal than court hearings. *Id.* (requiring only that the ULJ “exercise control over the hearing procedure in a manner that protects the parties’ rights to a fair hearing”). Although the ULJ is “not bound by statutory and common law rules of evidence,” the decision nevertheless must be based on “reliable, probative, and substantial evidence.” Minn. R. 3310.2922 (2007).

The record here does not support relator’s claim that the ULJ’s conduct at the hearing exhibited prejudice. Relator contends that the ULJ “constantly interrupted” her during the hearing and “was rude . . . from the start of the conversation.” But the transcript does not indicate that the ULJ engaged in rude or inappropriate behavior. Rather, the record indicates that the ULJ made efforts to help pro se relator better understand how to present evidence and make legal objections to respondent’s evidence.

Additionally, there is no merit to relator’s argument that the ULJ failed to adequately consider the evidence she proffered at the hearing. The record indicates that relator was given a fair opportunity to present her version of events. The hearing was not conducted in a formalistic manner like a court trial. Instead, the ULJ conducted the hearing informally by asking questions about a variety of subjects pertinent to the case, and relator was given ample opportunity to present testimony and evidence. And after the presentation of evidence, the ULJ allowed relator to make a closing statement. Because Minn. R. 3310.2922 allows a ULJ to interject and prohibit a party from offering irrelevant evidence into the record, it was within the ULJ’s discretion to exclude relator’s

testimony regarding the hardship she was experiencing in her personal life leading up to her termination, as well as her testimony regarding her supervisor's lack of experience. *See* Minn. R. 3310.2922 (giving the ULJ authority to “exclude any evidence which is irrelevant, immaterial, unreliable, or unduly repetitious”). Likewise, it was appropriate for the ULJ to refuse to consider any evidence not offered into the record at the hearing in making her determination. *See id.* (stating that “[o]nly evidence received into the record of any hearing may be considered by the unemployment law judge”).

Relator also contends that, because one of the dates listed as a tardy on her final warning from Wells Fargo is inaccurate, the ULJ's determination that she engaged in employment misconduct was erroneous. But even assuming that the date listed is incorrect, this particular fact was not the basis for the ULJ's decision that relator was discharged for employment misconduct. Rather, the ULJ's decision was based on her finding that relator admittedly engaged in a pattern of tardiness that was sufficiently chronic and excessive to demonstrate “a serious violation of the standards of behavior” an employer has the right to reasonably expect of an employee. Minn. Stat. § 268.095, subd. 6(a).

In sum, because the ULJ's determination that relator was discharged for engaging in employment misconduct conforms to proper procedure, complies with the law, and is supported by substantial evidence in the record, we conclude the ULJ did not err in determining relator was not qualified to receive unemployment benefits.

Affirmed.