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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2283**

Ianni Houmas,
Relator,

vs.

Qwest Corporation,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed October 13, 2009
Affirmed
Bjorkman, Judge**

Department of Employment and Economic Development
File No. 21006991-3

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Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) that he is ineligible to receive unemployment benefits because he was discharged for employment misconduct. Because the decision of the ULJ relies on lawful procedure and is supported by substantial evidence, we affirm.

FACTS

Relator Ianni Houmas worked for respondent Qwest Corporation as an installation and maintenance technician from February 14, 2000, through June 26, 2008. He regularly drove company vehicles as part of his job. Between January 2006 and early 2007, Houmas received five speeding tickets while driving his personal vehicle. Although one of these tickets was expunged from his driving record, the State of Minnesota suspended his driver's license from April through June 2007.

Qwest's employee policy requires employees who operate company vehicles to immediately report such traffic offenses. The policy provides, in pertinent part:

[I]f you operate company motorized vehicles or aircraft as part of your work assignments . . . [y]ou must immediately report to your supervisor any on-the-job and/or off-the-job traffic ticket, accident, citation, or other issue that impacts the status of your driver's or pilot's license.

On a case-by-case basis, Qwest will (in its sole discretion and in accordance with applicable law) assess the impact that such off-duty misconduct may have on Qwest's interests and may take disciplinary action against the employee involved in such misconduct, up to and including termination of employment.

Christopher Korbisch was Houmas's immediate supervisor at Qwest. Korbisch was responsible for ensuring that Qwest drivers maintained safe driving records and valid licenses. During a yearly "safety round-up" in April 2008, Korbisch noticed an irregularity with Houmas's license and asked Pamela Pope, the lead EEO representative at Qwest, to investigate.¹ Pope discovered the speeding violations and license suspension. Houmas was subsequently discharged.

Houmas established an unemployment benefit account, and respondent Minnesota Department of Employment and Economic Development (DEED) determined that he was not eligible to receive benefits because he was discharged for employment misconduct. Houmas appealed and a ULJ held an evidentiary hearing. The ULJ determined that Houmas was discharged for employment misconduct and therefore ineligible for unemployment benefits. Houmas requested reconsideration and the ULJ affirmed her decision. This certiorari appeal follows.

D E C I S I O N

An employee who is discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (Supp. 2007). On appeal from a determination of ineligibility, we will affirm the ULJ's decision unless "the substantial rights of the petitioner may have been prejudiced" because the decision relies on unlawful procedure, is legally erroneous, is unsupported by substantial evidence, or is arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d)(3)-(6) (Supp. 2007); *see*

¹ Houmas had informed Korbisch about only one of the speeding tickets.

Ywswf v. Teleplan Wireless Servs., Inc., 726 N.W.2d 525, 529 (Minn. App. 2007) (citing this standard of review).

I. The ULJ's decision relies on lawful procedure.

At an evidentiary hearing, the ULJ has a statutory duty to ensure that all relevant facts are clearly and fully developed. Minn. Stat. § 268.105, subd. 1(b) (Supp. 2007). The ULJ may receive any evidence that has probative value and may exclude any evidence that is irrelevant, immaterial, unreliable, or unduly repetitious. Minn. R. 3310.2922 (2007). To establish that a reversal is warranted based on the failure to admit evidence, Houmas must show that his substantial rights were prejudiced by the ULJ's failure to receive his exhibits into evidence. *See* Minn. Stat. § 268.105, subd. 7 (Supp. 2007); *Ywswf*, 726 N.W.2d at 530 (holding omission of documents to be harmless error).

Houmas argues that the ULJ did not ensure the full development of all relevant facts because she excluded two of his exhibits: (1) documents from his personnel file allegedly demonstrating that Houmas had a good work record and "good character," and (2) documents related to Qwest's progressive discipline policy.

The ULJ excluded these documents on the ground that they are irrelevant. We agree. The issue in this unemployment compensation case is whether Houmas committed employment misconduct by failing to report his citations and license suspension. Neither his past work record nor Qwest's discipline policy addresses that issue. In addition, the policy documents are duplicative of documents that the ULJ had already received into evidence. On this record, Houmas has not demonstrated that exclusion of the two exhibits prejudiced his substantial rights.

II. The ULJ's decision is supported by substantial evidence.

“Whether an employee committed employment misconduct is a mixed question of fact and law.” *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether an employee committed a particular act is a question of fact that we review in the light most favorable to the ULJ's decision with deference to the ULJ's credibility determinations. *Id.* Whether the act committed by the employee constitutes employment misconduct is a question of law that we review de novo. *Id.*

Employment misconduct is “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) (Supp. 2007).

Houmas argues that he was not discharged for misconduct but because of a disagreement he had with Korbisch over union activity. In support of this argument, Houmas contends that the record does not support a finding of employment misconduct because (1) he was not required to report traffic violations that were expunged from his record, (2) he was not aware of the reporting requirement until late in 2008, (3) his license was suspended in error, (4) he did inform Korbisch about the suspension, and (5) he had a valid Wisconsin license while his Minnesota license was under suspension. Houmas also challenges the ULJ's focus on his unreported speeding tickets when the discharge letter from Qwest referenced only his suspended license as the reason for termination. These arguments are unavailing.

We first note that Houmas presented the same arguments to the ULJ, and the ULJ expressly weighed the credibility of the witnesses in deciding these factual issues. The ULJ found that Houmas's failure to report multiple speeding tickets violates standards of behavior that Qwest has a right to reasonably expect of its employees, and that Houmas's failure to report the suspension of his license demonstrates a substantial lack of concern for the employment.

The ULJ's decision is supported by substantial facts admitted by Houmas himself. Houmas does not contest that he received a series of speeding tickets in 2006-07 that he did not report to Qwest. Houmas admits that he reported one speeding violation in early 2007. Houmas also acknowledges that the Qwest policy required him to report all such traffic violations.² As the ULJ noted, Houmas's belief that one of his speeding violations was expunged and his claim that he did not know about the reporting policy does not explain why he would report one violation and not the others.

Houmas also admits that his license was suspended during a time that he operated Qwest vehicles and that he discovered this suspension no later than June 2007, when he paid the reinstatement fee. Even if Houmas believed his license was suspended in error, he knew of the suspension in June 2007, at the latest, and was required to inform Qwest at that time.

² Houmas argued for the first time in his reconsideration request that he was unaware of Qwest's reporting requirements prior to 2008. The ULJ expressly noted that Houmas made no such assertion during the hearing and that, in fact, he testified that he simply forgot to report all but one of his traffic offenses.

The parties presented conflicting testimony as to whether Houmas reported his license suspension to Korbisch. In making credibility determinations, a ULJ may consider whether the witness was frank and direct, seemed honest and sincere, and if the testimony is reasonable compared to other evidence. *Ywswf*, 726 N.W.2d at 533. Here, the ULJ gave Korbisch's testimony greater weight because it was consistent with other evidence, while Houmas's own testimony on this point was internally inconsistent and conflicted with affidavit testimony of his mother and one of his other witnesses. Based on our review of this record, we conclude that ample evidence supports the ULJ's finding that Houmas did not report his license suspension to Korbisch. And we conclude that the ULJ did not err in determining that Houmas's failure to report the suspension constitutes employment misconduct.

Finally, the fact that Houmas may have had a valid Wisconsin license at all relevant times does not negate the existence of or his need to report his speeding tickets and the suspension of his Minnesota license. And the claimed discrepancy between the termination ground Qwest cited in its letter and the ULJ's findings is irrelevant: Qwest's letter lists only the most recent termination ground, but the testimony of the Qwest witnesses supports the ULJ's determination with respect to the other termination grounds.

Affirmed.