

*This opinion will be unpublished and  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  
A13-1020**

Litiesha Harden,  
Relator,

vs.

Solimar Wellness Spa, Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed February 3, 2014  
Affirmed  
Kalitowski, Judge**

Department of Employment and Economic Development  
File No. 30994066-3

Litiesha L. Harden, Savage, Minnesota (pro se relator)

Solimar Wellness Spa, Inc., Eagan, Minnesota (respondent)

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

Considered and decided by Kalitowski, Presiding Judge; Connolly, Judge; and  
Crippen, Judge.\*

---

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

## UNPUBLISHED OPINION

**KALITOWSKI**, Judge

Pro se relator Litiesha Harden challenges the unemployment-law judge's (ULJ) decision that she is ineligible for unemployment benefits because she was discharged for employment misconduct. Harden argues that (1) the ULJ erred by concluding that Harden committed employment misconduct; (2) she did not receive a fair hearing; and (3) her request for reconsideration should not have been considered by the same ULJ. We affirm.

### DECISION

#### I.

Harden claims that she is eligible for unemployment benefits because she did not commit employment misconduct. We disagree.

When an employer discharges an employee for "employment misconduct," the employee is disqualified from receiving 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 the right to reasonably expect of the employee; or (2) a substantial lack of concern for the employment." *Id.*, subd. 6(a) (2012). An employer has the right to expect its employees to follow its reasonable requests, and failure to do so constitutes employment misconduct. *Sandstrom v. Douglas Mach. Corp.*, 372 N.W.2d 89, 91 (Minn. App. 1985). "A single deliberate act that adversely affects the

employer may constitute misconduct.” *Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 206 (Minn. App. 2004), *review denied* (Minn. Mar. 30, 2004).

A challenge to the ULJ’s determination that an employee committed employment misconduct presents 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 for determination by the ULJ, but whether the employee’s act constitutes employment misconduct is a question of law that we review de novo. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). In reviewing the ULJ’s decision, “[w]e view the ULJ’s factual findings in the light most favorable to the decision,” and defer to the ULJ’s credibility determinations. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We will not disturb the ULJ’s factual findings if they are supported by substantial evidence. *Id.*

Harden was employed at Solimar Wellness Spa (Solimar) as a front-desk employee from August 29, 2012, until her discharge on November 2, 2012. Harden applied for unemployment benefits, and in April 2013, respondent Minnesota Department of Employment and Economic Development determined that Harden was ineligible for benefits. Harden appealed, and an evidentiary hearing was held. The ULJ determined that Harden was ineligible for unemployment benefits under section 268.095 because Harden’s conduct had a significant negative effect on employer-respondent Solimar that displayed a serious violation of the standards of behavior Solimar had the right to reasonably expect. Harden filed a request for reconsideration, and the ULJ affirmed the initial decision.

Harden primarily contends that the ULJ's determination that she committed employment misconduct is erroneous because she did not receive warnings prior to her termination. But the record shows that Harden was not discharged for the behavior that warranted the warnings. Rather, Harden was discharged for her reaction when management tried to present her with a warning and discuss her inappropriate behavior.

On November 1, 2012, two Solimar managers spoke with Harden regarding her previous interactions with a co-worker and her professionalism. And they attempted to present a written warning for her to sign. During this discussion, Harden became defensive, raised her voice, and denied behaving improperly. The spa owner intervened to calm Harden down and eventually sent her home. The next day, Harden met with the Solimar managers and owner regarding her attitude and behavior in the workplace. At this meeting, Harden again became defensive, angry, raised her voice within earshot of spa clients, and told the managers that she would do her job without talking to her co-workers and that "[they] had never seen her mad." At this time, a collective decision was made to terminate Harden and the police were called.

The ULJ concluded that Harden's persistent belligerence in the presence of clients demonstrated a substantial lack of concern for the employment. In making this finding, the ULJ relied on testimony of two Solimar managers, the spa owner, and Harden. All three Solimar witnesses testified that Harden stated that she would not talk to her co-workers, refused to accept warnings, refused to acknowledge their efforts to work on her conduct, and engaged in combative conduct when approached with behavior-modification requests. Moreover, Harden testified that she did not think it was possible

to put these discussions in the past and move forward. And Harden has not set forth any argument as to why Solimar's requests that she work on her professionalism were unreasonable. *See Sandstrom*, 372 N.W.2d at 91 (holding that an employer has the right to expect employees to follow reasonable requests, and failure to do so constitutes employment misconduct).

We conclude that Harden's refusal to acknowledge and correct behavioral issues and her belligerence towards her managers is supported by the record. And Harden's belligerence and refusal to correct her behavior was a violation of a clear standard of behavior that Solimar had the right to reasonably expect Harden to comply with. Accordingly, the ULJ properly concluded that Harden was discharged for employment misconduct.

## **II.**

Harden contends that she did not receive a fair hearing because she was not allowed a fair chance to speak at the hearing and because the ULJ overlooked important information. We disagree.

A ULJ conducts the evidentiary hearing as an evidence-gathering inquiry, and must gather and ensure that all relevant facts are fully developed. Minn. Stat. § 268.105, subd. 1(b) (2012). And the ULJ "should assist unrepresented parties in the presentation of evidence." Minn. R. 3310.2921 (2013).

First, Harden does not point to any instances where she was not allowed to speak. And our review of the record reveals that the ULJ allowed Harden multiple opportunities to testify and to ask questions. Harden was given an opportunity to present her version of

the events leading to her termination and an opportunity to respond to questions posed by Solimar employees. In addition, the record indicates that the ULJ asked Harden questions to further develop the facts relating to her discharge. Thus, we conclude that Harden was allowed a fair opportunity to speak at the hearing.

Harden also asserts that the ULJ overlooked information that proved Solimar was “untruthful” about her termination. Harden points out discrepancies in the record regarding whether she received a warning prior to termination. But Harden was not discharged for the behavior requiring the warning. Moreover, even if she was fired due to her prior behavior, an employee’s discharge need not be preceded by a warning. *See Auger v. Gillette Co.*, 303 N.W.2d 255, 257 (Minn. 1981) (maintaining that a warning was not essential to demonstrate that employees acted in willful disregard of employer’s interest).

The record reflects that the ULJ fully and clearly developed the record regarding the reason for Harden’s termination—her reactions to the November 1st and 2nd meetings. During the hearing, Harden had multiple opportunities to refute Solimar’s characterization of the meetings and explain her side of the story. And although the ULJ limited Harden’s testimony pertaining to the incidents necessitating the November 1st and 2nd meetings, this was within the ULJ’s discretion. *See Minn. R. 3310.2922* (2013) (stating a ULJ does not have to consider irrelevant evidence). On this record, we conclude Harden received a fair evidentiary hearing.

### III.

Finally, Harden contends it was unfair to have the same ULJ decide her appeal and her request for reconsideration. Generally, the ULJ who issued the findings of fact and decision following the evidentiary hearing also hears a request for reconsideration. Minn. Stat. § 268.105, subd. 2(e) (2012). Minnesota law provides the following exceptions for when the same judge may not consider the request for reconsideration:

A request for reconsideration must be decided by the unemployment law judge who issued the decision under subdivision 1 unless that unemployment law judge: (1) is no longer employed by the department; (2) is on an extended or indefinite leave; (3) has been disqualified from the proceedings on the judge's own motion; or (4) has been removed from the proceedings by the chief unemployment law judge.

*Id.* Harden does not claim that any of these exceptions apply. Thus, it was proper for the same ULJ to consider both the appeal and the request for reconsideration.

**Affirmed.**