

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1218**

Cassandra Ferdig,
Relator,

vs.

Northwestern Minnesota Juvenile Center,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 31, 2022
Affirmed
Bratvold, Judge**

Department of Employment and Economic Development
File No. 46440912-3

Cassandra M. Ferdig, Bemidji, Minnesota (pro se relator)

Northwestern Minnesota Juvenile Center, Bemidji, Minnesota (respondent employer)

Keri Phillips, Anne B. Froelich, Minnesota Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Slieter, Presiding Judge; Segal, Chief Judge; and
Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

By writ of certiorari, relator challenges an unemployment-law judge's ("ULJ")
determination on reconsideration that she was ineligible for unemployment benefits.

Relator argues the ULJ erred by finding relator's testimony less credible than her employer's testimony and by concluding that employer discharged relator for employment misconduct. First, we generally defer to the ULJ's credibility determinations, and, in this case, the ULJ's credibility determinations are supported by reasoning and the record. Second, the ULJ did not err by determining that relator failed to follow the reasonable policies of her employer. Thus, we affirm.

FACTS

These facts summarize the ULJ's written findings after a request for reconsideration. Relator Cassandra Ferdig began working as a corrections officer for respondent-employer Northwestern Minnesota Juvenile Center (juvenile center) on June 26, 2020. On November 10, 2020, Ferdig pulled down her face mask while dispensing medication, violating the juvenile center's policy requiring all employees to wear face masks. C.M., Ferdig's direct supervisor, issued Ferdig a verbal reprimand for violating the mask policy on November 12, 2020.

On April 12, 2021, Ferdig was scheduled to work a ten-hour shift but left work 55 minutes early. Even so, she recorded ten hours on her timecard. On April 14, Ferdig worked nine hours but recorded working eleven hours on her timecard.

On April 25, 2021, Ferdig texted C.M., said she was feeling dizzy, and asked for C.M.'s permission to leave work early. C.M. reminded Ferdig that she only had seven hours of paid time off for the current pay period and stated that C.M. would "not authoriz[e]" Ferdig "to take more leave than [she had]." C.M. explained that Ferdig could take unpaid

leave if she had a medical note. Ferdig confirmed that she needed to leave work and told C.M. that she would provide a medical note the next morning.

On the evening of April 25, Ferdig texted her shift lead, Z.H., stating she would be absent on April 26 because of a doctor's appointment. The same evening, Ferdig texted C.M. about a timecard change but did not mention her planned absence for April 26. The juvenile center's policy required Ferdig to notify her direct supervisor, C.M., of any absences.

On April 26, Ferdig did not report to work as scheduled because of her doctor's appointment. When Ferdig reported to work later that day, C.M. discharged her, in part for violating the mask policy on November 10, recording her hours incorrectly on April 12 and 14, and failing to notify C.M. of her absence on April 26.

Ferdig submitted a request for unemployment benefits. Respondent Department of Employment and Economic Development (DEED) determined she was ineligible for benefits because the juvenile center terminated her for employment misconduct. Ferdig appealed the ineligibility determination and received a telephone hearing before a ULJ, who heard testimony from Ferdig, C.M., and a director for the juvenile center.

In a written decision, the ULJ concluded Ferdig did not commit employment misconduct and was thus eligible for unemployment benefits. The ULJ found Ferdig's testimony credible and reasoned that Ferdig's actions were not employment misconduct because (1) a single instance of not wearing a mask "does not amount to a serious violation of the [juvenile center's] reasonable standards of conduct"; (2) Ferdig's "conduct of writing the wrong number of hours on her timecard was the result of her inadvertence";

and (3) Ferdig “believed she was providing proper notice” of her absence on April 26 by notifying her shift lead.

The juvenile center requested reconsideration, and a different ULJ was assigned. Though the reason for the reassignment is not entirely clear in the record, DEED’s brief to this court suggests the original ULJ took an extended leave of absence, so a different ULJ was assigned under Minn. Stat. § 268.105, subd. 2(e)(2) (2020).

In a written decision, the ULJ modified the earlier decision. The ULJ found Ferdig’s testimony to be less credible than testimony offered by the juvenile center’s witnesses because Ferdig’s testimony conflicted with other evidence. In particular, the ULJ found (1) the juvenile center’s mask policy was clearly communicated to employees; (2) Ferdig “falsified her hours on April 12 and 14”; (3) Ferdig’s decision not to notify C.M. of her absence on April 26 was unreasonable, based in part on her text communications with C.M. on April 25; and (4) Ferdig’s claim that she was let go without warning was contradicted by evidence that the juvenile center reprimanded her twice before termination. The ULJ determined Ferdig’s failure to abide by the juvenile center’s reasonable policies was employment misconduct, rendering her ineligible for unemployment benefits.

Ferdig petitioned for writ of certiorari.

DECISION

When reviewing the ULJ’s decision, we may affirm, reverse, or modify the decision if the relator’s substantial rights were prejudiced because the ULJ’s 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 hearing record as submitted; or (6) arbitrary or capricious.” Minn. Stat. § 268.105, subd. 7(d) (2020).

“We view the ULJ’s factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. In doing so, we 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) (citations omitted). “Substantial evidence is ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” *Posey v. Securitas Sec. Servs. USA, Inc.*, 879 N.W.2d 662, 665 (Minn. App. 2016) (quoting *Minneapolis Van & Warehouse Co. v. St. Paul Terminal Warehouse Co.*, 180 N.W.2d 175, 178 (Minn. 1970)). When addressing a question of law, this court is “free to exercise . . . independent judgment.” *Jenkins v. American Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006).

A ULJ’s decision on reconsideration may “modify[] the findings of fact, reasons for decision, and decision.” Minn. Stat. § 268.105, subd. 2(f)(2) (2020). On certiorari review, we consider the ULJ’s decision on reconsideration. Minn. Stat. § 268.105, subd. 7(a) (2020).

I. The ULJ did not err by finding Ferdig less credible than the juvenile center’s witnesses.

The ULJ found Ferdig less credible than the juvenile center’s witnesses because Ferdig’s testimony “was less plausible” and “conflicted with information that she provided in her written submissions,” and the testimony of the juvenile center’s witnesses was “more

straightforward, direct, consistent, and plausible.” “When the credibility of a witness testifying in a hearing has a significant effect on the outcome of a decision, the [ULJ] must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1a(a) (2020). Generally, “[c]redibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus*, 721 N.W.2d at 345.

Though Ferdig does not make an explicit argument about the ULJ’s credibility determinations, she implicitly challenges these findings by contrasting the determinations of the first and second ULJs and urging this court to reverse. DEED contends that the ULJ’s credibility determinations on reconsideration are supported by the record. We agree with DEED and defer to the ULJ’s credibility determinations for four reasons.

First, the ULJ found “Ferdig’s failure to disclose her past warnings [by the juvenile center] was deceptive and damages her credibility.” In her written submissions to DEED, Ferdig denied receiving warnings about her work conduct. The record shows that Ferdig received a verbal reprimand on November 12, 2020, for violating the juvenile center’s mask policy and a three-day suspension in January 2021 for insubordinate behavior toward C.M.

Second, the ULJ found Ferdig’s reason for contacting her shift lead and not her direct supervisor about her April 26 absence “was not reasonable.” C.M.’s testimony established that the juvenile center’s absence-notification policy requires employees to notify their direct supervisors of any absences. C.M testified that “it has never been authorized that a shift lead be notified instead of the supervisor.” This contradicts Ferdig’s

testimony that “it is acceptable to let the shift lead know that you are not coming in until you can get ahold of your direct supervisor.”

Third, the ULJ found that evidence suggested Ferdig “could have simply texted” C.M. on April 25 that “she was not coming in on April 26.” The record shows Ferdig texted C.M. on April 25 to ask about her timecard but did not mention her upcoming absence from work.

Fourth, the ULJ found Ferdig’s testimony about the “lack of clarity” in the mask policy “damaged her credibility.” C.M. testified that signs stating the juvenile center’s mask policy were posted throughout the building. The ULJ found the juvenile center “clearly communicated” to employees that “they were required to wear masks at all times unless they were in the breakroom or eating.”

In sum, because the ULJ articulated reasons for finding Ferdig’s testimony less credible than other record evidence, we defer to the ULJ’s adverse credibility finding.

II. The ULJ did not err by determining that the juvenile center discharged Ferdig for employment misconduct.

“Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law.” *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted). We review whether an employee engaged in misconduct “in the light most favorable to the decision and should not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them.” *Id.* (quotation omitted). We review de novo whether a particular act constitutes disqualifying misconduct. *Id.*

Employment misconduct is “any intentional, negligent, or indifferent conduct, on the job or off the job, that is a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee.” Minn. Stat. § 268.095, subd. 6(a) (2020). “As a general rule, refusing to abide by an employer’s reasonable policies and requests amounts to disqualifying misconduct.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). “Even a single incident can be misconduct if it represents a sufficient enough disregard for the employer’s expectations.” *Blau v. Masters Rest. Assocs., Inc.*, 345 N.W.2d 791, 794 (Minn. App. 1984).

Here, the ULJ found Ferdig intentionally violated employer policies in three ways: (1) Ferdig pulled down her mask while dispensing medication; (2) Ferdig falsified her timecard on two days; and (3) Ferdig failed to properly notify her direct supervisor, C.M., of her absence from work.

Ferdig does not contest the underlying factual findings. We note that we need not review the ULJ’s finding that Ferdig *intentionally* violated the employer’s policies because employment misconduct encompasses “intentional, negligent, or indifferent conduct.” Minn. Stat. § 268.095, subd. 6(a). Thus, we need only consider whether Ferdig’s conduct violated reasonable employer policies. *See Schmidgall*, 644 N.W.2d at 804.

The juvenile center’s policies on mask wearing and absence reporting have been described. Juvenile center policy also requires accurate time reporting. We conclude each of these three policies is reasonable. First, the juvenile center’s mask policy complied with

the statewide mask mandate then in effect,¹ supporting the health and safety of the juvenile center’s employees and residents. As a result, it was a reasonable policy, and the juvenile center had the right to expect Ferdig’s compliance.

Second, the juvenile center’s policy requiring employees to accurately record the hours they worked is reasonable. *See McKee v. Cub Foods, Inc.*, 380 N.W.2d 233, 236 (Minn. App. 1986) (holding an employee’s failure to abide by the employer’s timecard policy constituted employment misconduct); *Ruzynski v. Cub Foods, Inc.*, 378 N.W.2d 660, 663 (Minn. App. 1985) (affirming a ULJ’s ineligibility determination based on finding that the employee “falsified his time card,” violating the employer’s timecard policy). As the ULJ stated, an employer may reasonably expect employees to “refrain from claiming hours they did not actually work.”

Third, the juvenile center’s policy requiring employees to notify their direct supervisor of absences is reasonable because it helps the juvenile center ensure sufficient employee coverage for each shift. *See Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 28 (Minn. App. 2007) (holding an employer may establish and enforce reasonable rules governing employee absences); *Little v. Larson Bus Serv.*, 352 N.W.2d 813, 815 (Minn. App. 1984) (holding an employer “has a right to expect an employee to

¹ *See* Emerg Exec. Ord. No. 20-81, *Requiring Minnesotans to Wear a Face Covering in Certain Settings* (July 22, 2020) (requiring Minnesotans to wear face coverings in indoor public settings effective July 24, 2020); Emerg. Exec. Ord. No. 21-23, *Amending Emergency Executive Orders* (May 14, 2021) (rescinding the requirement that Minnesotans wear face coverings in indoor public settings).

work when scheduled”), *superseded by statute on other grounds*, Minn. Stat. § 268.095, subd. 6(e) (Supp. 2007).

Because Ferdig’s conduct violated her employer’s reasonable policies, the ULJ did not err by determining the juvenile center discharged Ferdig for employment misconduct.

Affirmed.