

*This opinion is nonprecedential except as provided by  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  
A22-0443**

Pamela Wilhelm,  
Relator,

vs.

Fairview Health Services,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed December 27, 2022  
Affirmed  
Ross, Judge**

Department of Employment and Economic Development  
File No. 48189946-3

Thomas C. Atmore, Martin & Squires, P.A., St. Paul, Minnesota (for relator)

Nicole Moen, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for respondent Fairview Health Services)

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Considered and decided by Frisch, Presiding Judge; Ross, Judge; and Connolly,  
Judge.

## **NONPRECEDENTIAL OPINION**

**ROSS**, Judge

Fairview Health Services terminated the employment of nurse Pamela Wilhelm for accessing medical records without consent or a business reason. The department of employment and economic development denied Wilhelm's request for unemployment benefits, and an unemployment-law judge upheld that decision after finding that Wilhelm's policy violation constituted employment misconduct. Because the record supports the finding that Wilhelm violated Fairview's patient-privacy policy and because the violation constitutes employment misconduct, we affirm.

### **FACTS**

Pamela Wilhelm worked as a Fairview Health Services nurse for 41 years until 2021, when she was discharged from employment for violating Fairview's privacy policy. Fairview prohibits employees from accessing patient medical charts without a business reason. Wilhelm accessed her son's girlfriend's medical chart without the girlfriend's knowledge or consent. To maintain her privacy, we refer to the girlfriend as Jane.

Wilhelm had been home on a lunch break from work when she encountered Jane, who had contracted COVID-19 and who appeared to Wilhelm to be developing pneumonia. After Jane declined Wilhelm's recommendation to seek emergency-room care, Wilhelm returned to work and accessed Jane's medical chart to search for a medical-appointment opportunity. Because Jane and Wilhelm shared an address, Fairview's automated records system flagged Wilhelm's actions. Fairview staff investigated and determined that Wilhelm had violated the privacy policy. Fairview terminated Wilhelm's employment.

Wilhelm applied to the Minnesota Department of Employment and Economic Development for unemployment benefits. The department declined Wilhelm's request, concluding that she was discharged for employment misconduct. Wilhelm challenged that conclusion, and after a hearing an unemployment-law judge (ULJ) also determined that she had engaged in disqualifying employment misconduct. Wilhelm appeals by certiorari.

## **DECISION**

Wilhelm challenges the ULJ's determination on procedural and substantive grounds. She argues that the ULJ relied on an improper procedure, that the ULJ insufficiently assessed witness credibility, and that substantial evidence did not support the ULJ's determination that she engaged in employment misconduct. We may reverse a ULJ's decision denying unemployment benefits if, among other things, his findings, inferences, conclusion, or decision rest on an unlawful procedure or on insubstantial evidentiary support. Minn. Stat. § 268.105, subd. 7(d)(3), (5) (2022). Wilhelm's challenges fail.

### **I**

Wilhelm first argues that the ULJ's decision rests on an unlawful procedure. We review procedural challenges underlying a ULJ's decision for an abuse of discretion in light of the ULJ's discretion to determine the manner of the proceeding and to exclude irrelevant, immaterial, unreliable, or unduly repetitious evidence. *See* Minn. R. 3310.2921, .2922 (2021). Wilhelm contends that the ULJ engaged in an unlawful procedure by conducting an unfair hearing in which he refused to allow Wilhelm to call two witnesses to testify—Jane and a fellow nurse. The contention fails because a ULJ may limit repetitious testimony.

Wilhelm argues specifically that Jane should have been allowed to testify about the examination Wilhelm performed when she became concerned about Jane's COVID-19 symptoms and that her fellow triage nurse should have been allowed to testify about how nurses check the Fairview system for appointments, what health information is visible in the system, and whether a nurse in Wilhelm's position had authority to access the chart to look for appointments. But Wilhelm had already testified about these things. Because refusing to accept repetitive evidence falls within the ULJ's discretion and, in any event, Wilhelm has identified no prejudice from excluding the testimony, we will not reverse based on the allegedly unlawful procedure.

Wilhelm references three other procedural issues, contending that the ULJ unfairly failed to assist Wilhelm to present evidence, improperly challenged Wilhelm's testimony, and wrongly attempted to force Wilhelm to make admissions. She fails to develop these into supported legal arguments, and our review of the record belies each assertion.

## II

Wilhelm contends second that the ULJ made insufficient credibility determinations. A ULJ must set out the reasons for crediting or discrediting a witness's testimony if that testimony significantly impacted the decision. Minn. Stat. § 268.105, subd. 1a(a) (2022). We will uphold a ULJ's credibility determination so long as substantial evidence supports it. *Yswsf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 531–33 (Minn. App. 2007); *Wichmann v. Travalia*, 729 N.W.2d 23, 29 (Minn. App. 2007). Only two witnesses testified: Wilhelm and Fairview's representative. The ULJ found the Fairview representative's testimony more credible than Wilhelm's, observing that the

representative's testimony was "detailed, specific and was more reasonable given the circumstances." Substantial evidence sufficiently supports the ULJ's credibility determinations.

### III

Wilhelm contends last that the ULJ erroneously determined that Fairview discharged her for employment misconduct. We review the ULJ's factual findings of behavior to determine if evidence reasonably supports them, and we review de novo whether the behavior constitutes employment misconduct. *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016). Employment misconduct includes intentional conduct that constitutes "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) (2022). The ULJ found that Wilhelm violated Fairview's privacy policy by accessing Jane's medical chart without permission or a business reason and that the violation constituted employment misconduct. He reasoned that Fairview reasonably expected its employees not to access patient records without a business reason and that Wilhelm's purported business reason, her concern for Jane, was neither credible nor a business reason. The representative's testimony, the ULJ's credibility decision, and our understanding that medical-care facilities have a legal duty to strictly maintain patient confidentiality support the findings.

We are not persuaded otherwise by Wilhelm's assertion that her conduct is excepted from the employment-misconduct definition, claiming that it constitutes "conduct an average reasonable employee would have engaged in under the circumstances" and was merely a "good faith error[] in judgment." *See* Minn. Stat. § 268.095, subd. 6(b)(4), (b)(6)

(2022). Wilhelm did not raise these issues before her appeal to this court, and we decline to review issues the ULJ did not consider. *Peterson v. Ne. Bank-Minneapolis*, 805 N.W.2d 878, 883 (Minn. App. 2011). We add that, even if the arguments had been raised, they are unconvincing. The average reasonable employee follows her employer's reasonable policies. *See Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). And the "good faith error in judgment" exception applies only "if [the employee's] judgment was required." Minn. Stat. § 268.095, subd. 6(b)(6). The record shows that Fairview expects employees to strictly follow its privacy policy, leaving no place for an employee's judgment or discretion as to whether she may access patient information without a business reason.

**Affirmed.**