

*This opinion is nonprecedential except as provided by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
A22-0447**

David Jacobs,
Relator,

vs.

Minnesota Department of Corrections,
Respondent,
Department of Employment and Economic Development,
Respondent.

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

Department of Employment and Economic Development
File No. 41705375-5

David Jacobs, Lakeland, Minnesota (pro se relator)

Minnesota Department of Corrections, Bayport, Minnesota (respondent employer)

Keri Phillips, Lossom Allen, Minnesota Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Reyes, Presiding Judge; Slieter, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Relator challenges the unemployment law judge's (ULJ) determination that the
Minnesota Department of Corrections (DOC) discharged him for employment misconduct,

arguing that his mental illness caused his inappropriate behavior and that it was only a single incident with no harm to the employer. We affirm.

FACTS

Relator David Jacobs worked for respondent DOC at the Stillwater correctional facility from June 9, 2010, to June 29, 2020. At the end of his employment, relator worked as a full-time Corrections Officer 2, earning \$26.56 per hour.

The incident giving rise to relator's discharge happened on June 9, 2020. Governor Tim Walz had issued a declaration asking Minnesotans to spend 8 minutes and 46 seconds in silence to honor the death of George Floyd, starting at 11:00 a.m. DOC informed the officers at the Stillwater facility of the moment of silence. Several minutes before the moment of silence, relator made a comment over the facility radio: "Is that moment of silence for Officer Chauvin [who is] currently unjustifiably in prison?" The comment upset several staff members who believed it was discriminatory. Although it was unclear whether any inmates overheard relator's remark, some staff members worried that it may lead to violence among inmates if they overheard it.

After the incident, DOC placed relator on a paid investigatory leave. On June 29, 2020, the warden at the Stillwater facility discharged relator for making a disrespectful and inappropriate comment over the facility radio system in violation of DOC Policy 103.228—Respectful Workplace and DOC Policy 103.220—Personal Code of Conduct of the Employees.

Respondent Minnesota Department of Employment and Economic Development (DEED) initially determined that relator was eligible for unemployment benefits. DOC

appealed. At the evidentiary hearing conducted by the ULJ, relator stated that he knew that the comment was inappropriate, but he had been upset throughout the day. He felt disappointed that the union president made no plan for the upcoming anniversary of the death of Joseph Gomm, a corrections officer who was killed by an inmate at the Stillwater facility in July 2018. Relator also claimed that he felt strongly about Officer Chauvin being assigned to a maximum-security prison in Minnesota before even appearing before a judge. About ten minutes before he made the comment over the radio, relator said to another officer: “I think I am getting into trouble today.” On February 8, 2021, the ULJ issued a new determination that DOC discharged relator for employment misconduct, which disqualified relator from receiving unemployment benefits.

Relator requested reconsideration, claiming for the first time that his mental illness caused his behavior on June 9, 2020, and that this inappropriate conduct was only a single incident that caused no harm to his employer. The ULJ set aside the previous determination of ineligibility and scheduled two additional evidentiary hearings. At the second hearing on reconsideration, relator testified that a doctor diagnosed him with depression in 1996, but his treatment did not begin until August 2016. Relator was also diagnosed with anxiety and was sent to the emergency room for a panic attack around 2016.

On October 20, 2021, the ULJ found that relator’s mental illness or impairment did not cause his behavior. The ULJ further determined that, despite being a single incident, his conduct “was sufficiently serious to rise to the level of employment misconduct.” Relator requested reconsideration, and the ULJ affirmed. Relator appeals by a writ of certiorari.

DECISION

Relator claims that the ULJ erred by determining that DOC discharged him for employment misconduct, arguing that his conduct resulted from his mental illness and was only a single incident that caused no adverse impact on the employer. We disagree.

“Whether an employee committed employment misconduct is a mixed question of fact and law. Whether the employee committed a particular act is a question of fact.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). “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.” *Id.* “In doing so, we will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Id.* (citing Minn. § 268.105, subd. 7(d)(5) (2020)). “But whether the act committed by the employee constitutes employment misconduct is a question of law, which we review de novo.” *Id.*

An applicant discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2022). Employment misconduct is “any intentional, negligent, or indifferent conduct, on 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.” *Id.*, subd. 6(a) (2022). However, if the conduct results from the applicant’s mental illness or impairment, it does not amount to employment misconduct. Minn. Stat. § 268.095, subd. 6(b)(1) (2022). When determining whether the conduct rises to the level of employment misconduct, the ULJ must consider whether the conduct for which the applicant was discharged involved only a single incident. Minn. Stat. § 268.095, subd. 6(d) (2022).

I. The ULJ did not err by finding that relator’s behavior was not a consequence of his mental illness.

Relator asserts that his mental illness led to his behavior on June 9, 2020, and he therefore did not commit employment misconduct. We are not persuaded.

As an initial matter, we note that relator does not dispute that he made the comment over the radio system shortly before the Stillwater facility observed the moment of silence. Whether his comment was a consequence of mental illness or impairment is a question of fact, which we review in the light most favorable to the ULJ’s finding and defer to the ULJ’s credibility determinations. *Skarhus*, 721 N.W.2d at 344; see *White v. University of Minnesota Physician Corp.*, 875 N.W.2d 351, 357 (Minn. App. 2016) (stating that claimant’s mental illness “could be a relevant fact”).

The record shows that the ULJ thoroughly considered the following testimony from relator: he has trouble with impulse control and can experience angry outbursts in public; he sometimes weeps uncontrollably; and he would regret everything that happened two to three minutes after his outbursts but cannot stop himself from having those outbursts. On June 6, 2020, he was experiencing feelings of hopelessness that were aggravated by the “lack of caring by the leadership at Stillwater” surrounding the anniversary of the death of Joseph Gomm, the corrections officer killed by an inmate at the facility two years ago. He did not have a panic attack that day, but he could not prevent himself from making the comment over the radio.

However, the ULJ found relator’s claim that he could not prevent himself from making the comment over the radio neither credible nor probable, stating that it is “highly

unlikely that a lack of impulse or control could be a consequence of depression and anxiety alone” The ULJ noted that relator’s medical providers have not told him that his conditions affect his impulse control. The letter from Dr. D.H. stated nothing beyond the fact that he had treated relator for depression since August 2016. Neither did the letter by his friend and former counselor, P.V., provide any information about his anger causing him to lose control of his behavior. Most significantly, about ten minutes before relator made the comment that day, when he was already feeling “hopeless” and “frustrated,” he said to another officer: “I think I’m getting in trouble today.” The ULJ found that the statement evidenced sufficient self-awareness and that his behavior was not a consequence of any mental illness or impairment.

Because substantial evidence in the record supports the ULJ’s finding that relator’s remark on June 9, 2020, was not a consequence of his mental illness or impairment, we will not disturb the ULJ’s finding.

II. The ULJ did not err by determining that relator’s behavior rose to the level of employment misconduct despite it being a single incident.

Relator claims that his behavior did not rise to the level of employment misconduct because it was only a single incident with no harm to the employer. We disagree.

Whether relator’s behavior constitutes employment misconduct is a question of law, which we review de novo. *Skarhus*, 721 N.W.2d at 344. “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).

First, as DEED correctly points out, there is no longer a single-incident exception to employment misconduct after the legislature amended the statute in 2008. *Potter v. Northern Empire Pizza, Inc.*, 805 N.W.2d 872, 875 (Minn. App. 2011). All the statute requires is that the ULJ “consider as an ‘important factor’ whether the discharge involved ‘only a single incident.’” *Id.* (citing Minn. Stat. § 268.095, subd. 6(d))

Here, the record shows that the ULJ considered that this was a single incident. The ULJ stated in its October 20, 2021, decision that “[a]lthough he was discharged for a single incident, relator’s behavior was sufficiently serious to rise to the level of employment misconduct.” The ULJ satisfied the statutory requirement under Minn. Stat. § 268.095, subd. 6(d), by considering the single-incident factor.

Next, we conclude that the ULJ did not err by determining that relator violated DOC’s reasonable policies and expectations in two ways: (1) making the disrespectful comment before the observation of silence and (2) using the facility’s radio system for non-security purposes.

Minnesota Management and Budget (MMB) has a Respectful Workplace Policy that governs all state employees. It seeks to build and maintain a respectful professional workplace for all employees, volunteers, contractors, and other persons visiting the workplace in public-service environments. In addition, DOC has its own Personal Code of Conduct of Employees, the purpose of which is to build and maintain a workplace where all individuals are treated with professionalism and respect. DOC requires all employees to review these policies annually. At the evidentiary hearing on DOC’s appeal, relator testified that he was familiar with both policies. His comment on June 9, 2020, violated

both policies and negatively affected many of DOC's staff. Some were upset, crying, and felt that the comment was discriminatory.

DOC also has a policy limiting the use of the radio systems for security purposes only. Relator confirmed that he knew about this policy. By making the comment over the radio for non-security purposes, relator failed to abide by DOC's reasonable policy.

Because we conclude that the record supports the ULJ's finding that relator's mental illness did not cause his behavior on June 9, 2020, and its determination that relator violated DOC's reasonable policies and expectations, we affirm.

Affirmed.