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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1642**

Ardon Gani,
Relator,

vs.

Target Corporation,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 25, 2010
Affirmed
Toussaint, Chief Judge**

Department of Employment and Economic Development
File No. 22346184-3

Ardon Gani, Minneapolis, Minnesota (pro se relator)

Target Corporation, c/o Barnett Associates, Inc., Garden City, Minnesota (respondent)

Lee B. Nelson, Amy R. Lawler, Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent Department of Employment and
Economic Development)

Considered and decided by Toussaint, Chief Judge; Larkin, Judge; and Randall,
Judge.*

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

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Relator Ardon Gani challenges the decision of the unemployment-law judge (ULJ) that Gani did not have good cause for failing to appear at the evidentiary hearing and that he was ineligible to receive unemployment benefits after being discharged for misconduct. Because substantial evidence sustains the ULJ's findings and Gani's acts meet the statutory criteria for misconduct, we affirm.

DECISION

This court will affirm the ULJ's decision unless it is affected by error of law or is not supported by substantial evidence. Minn. Stat. § 258.105, subd. 7(d) (2008). We will review findings of fact in the light most favorable to the ULJ's findings and defer to the ULJ's credibility determinations but will consider questions of law de novo. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We defer to a ULJ's decision denying an applicant's request for an additional evidentiary hearing, unless there is a showing of an abuse of discretion in this decision. *Id.* at 345.

After Gani was discharged from his employment, he applied for unemployment benefits, and respondent Department of Employment and Economic Development determined that he was eligible to receive benefits. Respondent Target Corporation appealed. An evidentiary hearing was scheduled and held, but Gani did not appear. The ULJ ruled that Gani had been discharged for misconduct and was ineligible for benefits. Gani requested reconsideration, addressing the merits of the decision but not explaining his failure to appear at the hearing. On reconsideration, the ULJ ruled that Gani did not

show good cause for missing the hearing and affirmed the ineligibility decision. This certiorari appeal followed.

We first address Gani's claim in this appeal that he had good reason to miss the evidentiary hearing because it was early in the morning and he had been sleeping. "Good cause" for missing a hearing is defined as "a reason that would have prevented a reasonable person acting with due diligence from participating at the evidentiary hearing." Minn. Stat. § 268.105, subd. 2(d) (2008). First, Gani did not give this information to the ULJ and, generally, this court cannot consider facts that the ULJ did not have. See *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988) (providing that appellate court generally will not consider matters not received into evidence before prior decisionmaker). Second, this court defers to the ULJ's decision as to whether there was good cause to miss the hearing. *Skarhus*, 721 N.W.2d at 345. Finally, the fact that Gani was sleeping at the time of the hearing is an insufficient basis on which to grant a request for reconsideration. See Minn. Stat. § 268.105, subd. 2(d) (defining good cause for failing to participate in hearing).

Next, we review Gani's argument that he did not commit employment misconduct. The ULJ ruled that Target had the right to expect employees to abide by the attendance policies, follow reasonable instructions, and work while being paid. The ULJ made a number of findings as to Gani's failure to meet these expectations. The record shows Gani was late or absent on ten occasions; he received a warning that additional attendance issues would result in further disciplinary actions. He also violated company safety policies and, again, was warned that he should follow the proper procedures. In

addition, he had been found wandering or shopping while on duty, and he had refused to perform work as instructed on several occasions. He was discharged after he was found reading a magazine in a food preparation area while he was on duty. These findings are supported by substantial evidence in the record before the ULJ and demonstrate a serious violation of the standards of behavior that the employer had the right to expect and were misconduct within the meaning of the statute. *See* Minn. Stat. § 268.095, subd. 6(a) (2008) (defining misconduct). Consequently, Gani is ineligible to receive unemployment benefits. *See* Minn. Stat. § 268.095, subd. 4(1) (2008) (providing that an applicant who was discharged for employment misconduct is ineligible to receive unemployment benefits).

Gani cites facts not in the record before the ULJ to explain his version of events or dispute the findings. Because these facts were not in the record, we cannot consider them for the first time on appeal. *See Thiele*, 425 N.W.2d at 582.

Affirmed.