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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1966**

Keisha Manyinsa,
Respondent,

vs.

Community Options St. Paul LLC,
Relator,

Department of Employment and Economic Development,
Respondent.

**Filed June 29, 2010
Affirmed
Bjorkman, Judge**

Department of Employment and Economic Development
File No. 22140097-5

Keisha Manyinsa, St. Paul, Minnesota (pro se respondent)

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Economic Development)

Considered and decided by Shumaker, Presiding Judge; Bjorkman, Judge; and
Willis, Judge.*

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

UNPUBLISHED OPINION

BJORKMAN, Judge

Relator employer challenges the unemployment-law judge's (ULJ) decisions that (1) respondent employee timely appealed the determination that she is ineligible for benefits and (2) respondent employee did not commit aggravated employment misconduct. We affirm.

FACTS

Respondent Keisha I. Manyinsa worked the overnight shift for relator Community Options St. Paul LLC, a residential treatment center, between November 2002 and March 2009. There were no issues with Manyinsa's performance until January 2009, when one of her coworkers reported that she was sleeping on the job. Community Options investigated but did not substantiate the allegation.

In early March 2009, two of Manyinsa's coworkers, who were both temporary workers, reported that Manyinsa was sleeping on the job. Community Options investigated the reports, interviewing the two temporary workers and four of the center's residents. The coworkers repeated their allegations, but the residents stated that they had not seen Manyinsa sleeping on the job. Manyinsa denied the allegations, and Community Options did not interview any of her other coworkers. Community Options concluded that Manyinsa had been sleeping on the job and discharged her on March 5, 2009.

Manyinsa applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) determined that she was ineligible

because she was terminated for aggravated employment misconduct. The ineligibility determination notice stated that she had until April 8 to appeal the decision.

Manyinsa attempted to file an electronic appeal on March 31. After filling out an online form on her computer, she received a message from DEED that the form was complete. On April 13, Manyinsa contacted DEED by telephone and learned that there was no record of her appeal. During this discussion, a DEED representative walked her through the process of filling out and submitting the online form. Manyinsa's computer screen again indicated that the form had been completed, but DEED's system showed no record of the appeal. The DEED representative advised her to submit a letter requesting an appeal by standard mail. Manyinsa did so, but a ULJ dismissed her appeal as untimely. Manyinsa requested reconsideration, and a different ULJ ordered an evidentiary hearing.

At the hearing, Manyinsa described the steps that she took to file her online appeal. Both Manyinsa and her supervisor testified about the events leading up to Manyinsa's termination. Manyinsa maintained that she never slept on the job. She also testified that the two coworkers who made the report had been instructed by the temporary employment agency to watch the regular overnight staff, and specifically, Manyinsa, because "they're known to sleep" on the job. The ULJ determined that Manyinsa's appeal was timely and that she is eligible for benefits, and affirmed on reconsideration. This certiorari appeal follows.

DECISION

Community Options first argues that Manyinsa's appeal of the ineligibility determination was not timely. A determination concerning unemployment benefits is final unless an appeal is filed within 20 days after the date of the determination. Minn. Stat. § 268.101, subd. 2(f) (2008). When submitted electronically, an appeal is "considered filed on the day received by the department." Minn. Stat. § 268.035, subd. 17 (2008). The statutory time limitations for appealing ineligibility determinations are "absolute and unambiguous," and failure to comply mandates dismissal of the appeal for lack of jurisdiction. *Kennedy v. Am. Paper Recycling Corp.*, 714 N.W.2d 738, 739 (Minn. App. 2006). Whether an appeal was timely filed is generally a legal issue, subject to de novo review. *Id.* But when the ULJ's findings of fact are at issue, we view them in the light most favorable to the decision and will not disturb the findings unless the evidence fails to substantially sustain them. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

The ULJ expressly found that Manyinsa's appeal was timely, based on her undisputed testimony. We construe Community Options' challenge to be directed at the ULJ's implicit factual determination that DEED received Manyinsa's appeal on March 31, 2009. Manyinsa testified that she attempted to file her appeal electronically on two separate occasions, the first on March 31 and the second time with the help of a DEED representative. Both times, her computer displayed a message that she had completed the form, but DEED's computer system did not confirm that she filed an appeal. It is undisputed that DEED has no record of either electronic filing, but DEED argues that it

“received” the appeal when the website advised Manyinsa that her appeal was “completed.”¹ On this record, Manyinsa’s testimony is substantial evidence that supports the ULJ’s finding that DEED timely received Manyinsa’s appeal. And because her testimony was undisputed, no express credibility findings were necessary. *See* Minn. Stat. § 268.105, subd. 1(c) (2008) (requiring express credibility findings “[w]hen the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision”). Accordingly, we decline to disturb this finding.

Community Options also challenges the ULJ’s determination that Manyinsa did not commit aggravated employment misconduct. The parties do not dispute that sleeping on the job constitutes aggravated employment misconduct. *See* Minn. Stat. § 268.095, subd. 6a(2) (2008) (providing that a worker at a licensed health-care facility commits aggravated employment misconduct when her conduct constitutes “recurring or serious neglect” of a patient). Thus, the focus of our analysis is on the factual question of whether Manyinsa slept on the job. The parties presented conflicting evidence on this point, so the ULJ’s credibility determinations are critical.

A ULJ must set out the reason for crediting or discrediting witness testimony, but this court will defer to a ULJ’s credibility determinations if they are supported by substantial evidence. Minn. Stat. § 268.105, subd. 1(c); *Ywswf v. Teleplan Wireless*

¹ On appeal to this court, DEED asserts that evidence exists that corroborates Manyinsa’s testimony and urges us to affirm the ULJ’s decision. Because this evidence was not presented to the ULJ, we do not consider it on appeal. *See* Minn. R. Civ. App. P. 110.01 (defining record on appeal), 115.04, subd. 1 (providing that rule 110.01 applies to certiorari appeals).

Servs., 726 N.W.2d 525, 530-31, 533 (Minn. App. 2007). A ULJ is only required to identify the reasons for crediting or discrediting the testimony of “an involved party or witness.” Minn. Stat. § 268.105, subd. 1(c).

The ULJ expressly determined that Manyinsa’s testimony was credible on the issue of whether she slept on the job, and that the written reports of her temporary coworkers were not credible. The ULJ stated the reasons why she found Manyinsa’s testimony more credible, including the fact that Community Options’ investigation did not substantiate the coworkers’ allegations and that during her more than six years of employment with Community Options, Manyinsa had not received warnings or other discipline for sleeping on the job or for any other reason before January 2009. Because the two coworkers are not parties and did not testify at the evidentiary hearing, the ULJ was not required to explain why she found that their statements were not credible.

Community Options also argues that the ULJ’s finding that the coworkers’ written reports are “vague and contradictory” is arbitrary and lacks support in the record. This argument has merit. The ULJ noted that the first coworker alleged that Manyinsa had slept during each of her Thursday night shifts during a three-week period of time, yet mentioned nothing about Friday nights. We agree with Community Options that this omission, in and of itself, does not make the report vague or contradictory. And we agree that the second coworker’s report is not unclear because it refers to both Manyinsa and a male employee sleeping on the job. The report clearly distinguishes, in separate paragraphs, between the conduct of Manyinsa and the other employee.

But the fact that certain of the ULJ's findings lack factual support does not mandate reversal. We only reverse or modify a ULJ's findings and decision if they are "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d)(5) (2008). The ULJ's critical factual determination that Manyinsa did not sleep on the job is supported by substantial evidence in the form of Manyinsa's testimony. The ULJ explicitly determined that Manyinsa's testimony was credible, for reasons that are amply supported by the record. Accordingly, we refuse to disturb the determination that Manyinsa did not commit misconduct.

Because Manyinsa's testimony adequately supports the ULJ's determinations that her appeal was timely and that she did not commit aggravated employment misconduct, we affirm.

Affirmed.