STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2014

Tyrome Booker,
Relator,

vs.

University of St. Thomas,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed August 3, 2010
Affirmed
Toussaint, Chief Judge

Department of Employment and Economic Development
File No. 23116554-3

Tyrome Booker, St. Paul, Minnesota (pro se relator)

Phyllis Karasov, Martin D. Kappenman, Moore Costello & Hart, P.L.L.P., St. Paul, Minnesota (for respondent University of St. Thomas)

Lee B. Nelson, Britt K. Lindsay-Waterman, Department of Employment and Economic Development, St. Paul, Minnesota (for respondent Department of Employment and Economic Development)

Considered and decided by Toussaint, Chief Judge; Hudson, Judge; and Willis, Judge.*

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

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Chief Judge

Relator Tyrome Booker challenges the determination of the unemployment-law judge (ULJ) that Booker is ineligible for unemployment benefits because he was discharged for misconduct. Because the ULJ's findings are supported by substantial evidence and her legal conclusions correctly apply the law, we affirm.

D E C I S I O N

"Whether the employee committed an act alleged to be employment misconduct is a fact question, but the interpretation of whether that act is employment misconduct is an issue of law." *Risk v. Eastside Beverage*, 664 N.W.2d 16, 19-20 (Minn. App. 2003). This court review questions of law de novo. *Id*. at 20. Employment misconduct is "any intentional, negligent, or indifferent conduct, on the job or off the job that displays clearly: (1) a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee; or (2) a substantial lack of concern for the employment." Minn. Stat. § 268.095, subd. 6(a) (Supp. 2009).

Booker was a public-safety officer employed by respondent University of St. Thomas. In December 2008, Booker's doctor placed him on medical restrictions following a car accident. Booker was given restrictions on lifting, pushing, or pulling anything greater than 20 pounds, and working overtime. On several occasion in May and June 2009, St. Thomas requested information from Booker regarding how long it would need to accommodate Booker's medical restrictions. Booker's doctor returned forms that St. Thomas believed were unclear regarding the restrictions' duration. After repeated

attempts to obtain this information, and after Booker failed to attend a scheduled medical examination to determine the extent and duration of his injuries, St. Thomas discharged Booker on July 24, 2009.

Booker applied for unemployment benefits, and respondent Department of Employment and Economic Development (DEED) denied the application on the basis that Booker was terminated for misconduct. At a hearing before the ULJ, St. Thomas administrators and Booker testified to the events leading up to the discharge and submitted the letters exchanged between St. Thomas, Booker, and his doctor. The ULJ affirmed DEED's decision, finding that Booker committed misconduct by failing to respond to St. Thomas's reasonable requests for information regarding the duration of his work restrictions. On reconsideration the ULJ excluded from review new documents submitted by Booker and affirmed the decision.

Booker mainly argues on appeal that the ULJ erred by (1) finding that the doctors' statements did not indicate when Booker's medical restrictions would be over, (2) even if the doctor did not adequately communicate the duration of the restrictions, assigning that error as Booker's own misconduct, and (3) improperly excluding the newly submitted documents on reconsideration.[1]

[1] Booker makes additional complaints regarding the process by which St. Thomas terminated his employment, including a claim that his discharge was in retaliation to his prior objection to St. Thomas's requests for his medical information. Because these complaints involve fact issues we do not decide in the first instance on appeal and because Booker does not demonstrate how such issues translate into reversible error, we do not consider them further. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating matters not raised and considered below will not be considered on appeal);

A review of the letters from Booker's doctor confirms that St. Thomas was never given a clear indication of how long Booker's medical restrictions would last. When Booker submitted responses from his doctor on July 6 and 22, those forms sent mixed signals. The July 22 letter, which was the last straw for St. Thomas, stated that Booker was "able to perform all duties of his job at this time" but also listed current medical restrictions without any time limit. Despite St. Thomas's specific questions as to when Booker's restrictions would end, none of the submitted forms gave a clear answer. There is substantial evidence supporting the ULJ's findings that Booker did not adequately respond to St. Thomas's rightful and repeated requests for information regarding his medical restrictions.

We are also unconvinced by Booker's argument that he was not responsible for the failure to respond. Although Booker's doctor was the one who completed the inconsistent forms, the ULJ noted that Booker was given three ways to fulfill St. Thomas's request: (1) provide a release of his medical information; (2) provide a doctor's note stating how long his restrictions were expected to continue; or (3) attend the scheduled medical exam. In a nearly two-month period, Booker did not exercise any of those options. Although Booker contends that he missed the medical exam only because he was taking his daughter to school, we defer to the ULJ's finding that this explanation is "improbable." *See Skarhus v. Davanni's Inc*., 721 N.W.2d 340, 345 (Minn. App. 2006) ("Credibility determinations are the exclusive province of the ULJ and will not be

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Kucera v. Kucera, 275 Minn. 252, 254-55, 146 N.W.2d 181, 183 (1966) ("It is not within the province of [appellate courts] to determine issues of fact on appeal.").

disturbed on appeal.").

The documents excluded by the ULJ on reconsideration were additional medical statements and e-mails exchanged between Booker and his supervisor. In deciding a request for reconsideration, the ULJ must not consider evidence not submitted at the prior hearing but may hold an additional evidentiary hearing to address new evidence if it "would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence." Minn. Stat. § 268.105, subd. 2(c) (Supp. 2009). We defer to a ULJ's decision not to hold an additional evidentiary hearing and will not disturb it absent an abuse of discretion. *Skarhus*, 721 N.W.2d at 345.

The ULJ found that an additional evidentiary hearing was not required because Booker did not show why he did not submit the new evidence during his original hearing. Booker has not given any reason why he did not submit the new evidence at the first hearing. Nor has he shown how the new evidence could have changed the ULJ's decision. The ULJ did not abuse her discretion in excluding the exhibits submitted at reconsideration.

Affirmed.