STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1157

Anna Van Alst,
Relator,

vs.

Corporate Commission of Mille Lacs Band of Ojibwe Indians,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed May 16, 2011
Affirmed
Ross, Judge

Department of Employment and Economic Development
File No. 24889221-3

Anna E. Van Alst, Brooklyn Park, Minnesota (pro se relator)

Corporate Commission of Mille Lacs Band of Ojibwe Indians, Hinkley, Minnesota (respondent employer)

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

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

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

ROSS, Judge

Anna Van Alst contests an unemployment law judge's decision that her employer, Grand Casino, discharged her for employment misconduct, rendering her ineligible to receive unemployment benefits. She argues that she should be eligible for benefits because she missed work only when Grand Casino scheduled her on weekdays despite her request to work only weekends. Because the record supports the finding that Van Alst repeatedly violated Grand Casino's attendance policy despite several warnings, we affirm.

FACTS

Anna Van Alst worked as financial cashier three days a week for Grand Casino. Three months after she began employment she told her supervisor that she would be enrolled at St. Cloud State University and that she desired only weekend work. Her supervisor told her that Grand Casino would try to accommodate her school schedule "if possible" but could not guarantee it. She asked Van Alst for a copy of her class schedule several times but Van Alst never provided one.

Grand Casino scheduled Van Alst only for weekends during her first three weeks of school, but then it scheduled her for week days also. The first time it scheduled her for a Monday, she did not notify Grand Casino that she anticipated being absent and she did not show up for work. Grand Casino reprimanded her in writing. The next week Grand Casino scheduled her for two week days, and this time she called and said that she could not work those shifts. Grand Casino gave her an in-person warning that additional

"occurrences," such as failing to show up for a shift, could result in termination. Again she missed a scheduled week-day shift without giving notice. After this fourth absence, a late arrival, and missed training, Van Alst stopped coming to work altogether and Grand Casino considered her employment terminated.

Van Alst applied to the Minnesota Department of Employment and Economic Development for unemployment benefits. After a hearing, an unemployment law judge (ULJ) found that Van Alst was a "no call, no show" on two occasions, and that, because she failed to report to work or provide proper notice, she violated her employer's attendance policy. The ULJ concluded that Van Alst's attendance infractions were a "serious violation of the standards of behavior the employer had a right to reasonably expect" and that they therefore constituted employment misconduct. This certiorari appeal follows.

D E C I S I O N

Van Alst asks this court to reverse the ULJ's determination that she is ineligible for unemployment benefits. We may remand, reverse, or modify a ULJ's decision if a relator's substantial rights were prejudiced by fact findings that are unsupported by substantial evidence or by a decision that is affected by an error of law, made upon unlawful procedure, or arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d)(3)–(6) (2008). We review findings of fact in the light most favorable to the ULJ's decision and give deference to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Van Alst claims that she did not commit employment misconduct. An applicant who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008). Employment misconduct is "any intentional, negligent, or indifferent conduct" that clearly conveys "a serious violation of the standards of behavior the employer has the right to reasonably expect" or "a substantial lack of concern for the employment." *Id.*, subd. 6(a)(1), (2) (2008). We review de novo whether a particular act constitutes employment misconduct. *Schmidgall v. FilmTec Corp*., 644 N.W.2d 801, 804 (Minn. 2002).

Van Alst does not dispute that she was absent from work on numerous occasions, but she claims that she is entitled to receive unemployment compensation because her employer scheduled her to work during the week after she requested weekend shifts. Generally absenteeism is evidence of an employee's disregard of an employer's interest and so is considered employment misconduct. *Evenson v. Omnetics*, 344 N.W.2d 881, 883 (Minn. App. 1984). Failure to give notice of an absence from work is also misconduct. *Gustafson v. IRC Indus.*, 374 N.W.2d 594, 597 (Minn. App. 1985). Grand Casino never promised to schedule Van Alst on weekends only and Van Alst knew there were no guarantees. Grand Casino had no obligation to accommodate Van Alst's school schedule. *Cf. Goodman v. Minn. Dep't of Emp't. Servs.*, 312 Minn. 551, 552, 255 N.W.2d 222, 223 (1977) (prioritizing employment availability over school); Minn. Stat. § 268.085, subd. 15 (Supp. 2009) (same).

Van Alst also claims that she asked permission to have other employees work her week-day shifts. The ULJ did not so find. But even if this were true, Grand Casino was

not obligated to allow this arrangement. *See Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 28 (Minn. App. 2007) ("An employer has the right to establish and enforce reasonable rules governing absences from work."). On the factually supported findings, the ULJ correctly determined that Van Alst engaged in employment misconduct. Grand Casino had a policy to terminate employees with "two no call/no shows within a rolling 12-month period." Van Alst's failure to show up for work despite several warnings, is employment misconduct.

Affirmed.