STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2117

RaLynne Arreguin,
Relator,

vs.

Community Action Partnership of Ramsey and Washington Counties,
Respondent,
Department of Employment and Economic Development,
Respondent.

Filed July 25, 2011
Affirmed
Stauber, Judge

Department of Employment and Economic Development
File No. 25731327-3

Jon Geffen, Arneson & Geffen, P.L.L.C., Minneapolis, Minnesota (for relator)

Community Action Partnership of Ramsey & Washington Counties, St. Louis, Missouri (respondent employer)

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

Considered and decided by Stauber, Presiding Judge; Stoneburner, Judge; and Ross, Judge.

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

STAUBER, Judge

On certiorari appeal from the decision of the unemployment-law judge (ULJ) that relator was ineligible for unemployment benefits because she was discharged for employment misconduct, relator argues that (1) the ULJ's decision is not supported by substantial evidence and (2) she is entitled to a new evidentiary hearing because the ULJ failed to fully develop the record. We affirm.

FACTS

In 1988, relator RaLynne Arreguin began working for respondent Community Action Partnership (CAP) as a full-time toddler teacher. CAP has a written policy that prohibits teachers from using physical punishment or strategies that are emotionally abusive when caring for children. Relator violated this policy in 1997, and received a written reprimand for being insensitive and making derogatory remarks to a child. A year later, relator was discharged for inappropriately disciplining and supervising children in her care. Relator, however, challenged her discharge through her union and was reinstated to her position following an arbitration hearing.

CAP discharged relator a second time in November 2006, following an incident in which relator grabbed a child roughly by the arm and sat the child down hard on the ground. Relator filed another grievance with the union regarding the termination and was once again reinstated to her position following an arbitration hearing. The arbitration award provided that relator's "records shall . . . be expunged of the discipline herein."

On June 24, 2010, relator and another teacher, Stacy, were watching several children who were playing outside in a "sandbox that had been [converted] into a swimming pool." One of the children was drinking water and spitting it at the other children. Relator told the child to stop, and when he refused relator "picked up the child . . . by the armpits and flipped him onto his back in the sandbox . . . swimming pool." Relator then "held him down with her right hand on his chest and told him to cut it out or she would dunk him." The child "began to cry very hard," prompting relator to tell him, "oh you are fine."

Stacy reported the incident to CAP's management, and following an investigation, relator's employment was terminated. Relator subsequently established a benefit account with respondent Minnesota Department of Employment and Economic Development (department) which initially determined that relator was ineligible for unemployment benefits because she had been discharged for employment misconduct. Relator appealed that determination and a de novo hearing was held. At the hearing, relator testified that she lowered the child onto his back in the water for fun and that she was trying to "play with him so he could quit spitting." Relator also testified that "I didn't flip him over to his back from under his arms," and denied telling him "to cut it out or I'm going to dunk you."

The ULJ found relator's testimony to be "not credible" and concluded that relator was ineligible for unemployment benefits because she was discharged for employment misconduct. Relator filed a request for reconsideration with the ULJ, who affirmed his decision. This certiorari appeal followed.

D E C I S I O N

I.

On certiorari appeal, we review the ULJ's decision to determine whether a petitioner's substantial rights were prejudiced because the findings, inferences, conclusion, or decision are affected by error of law or unsupported by substantial evidence in view of the whole record. Minn. Stat. § 268.105, subd. 7(d) (2010). Substantial evidence is "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

Employees discharged for misconduct are disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). "Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law." *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether an employee committed the alleged act is a fact question. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). This court defers to the ULJ's credibility determinations and findings of fact. *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007). But whether a particular act constitutes employment misconduct is a question of law, which this court reviews de novo. *Schmidgall*, 644 N.W.2d at 804.

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) (2010). Employment misconduct is not "inefficiency or inadvertence," "simple unsatisfactory conduct," "conduct that was a consequence of the [employee's] inability or incapacity," or "good faith errors in judgment if judgment was required." *Id.*, subd. 6(b) (2010).

Relator argues that the ULJ's decision that she engaged in employment misconduct is not supported by substantial evidence because it is based on hearsay and indirect evidence. We disagree. Minnesota law provides that the evidentiary standard in an unemployment hearing need not conform to the rules of evidence. Minn. Stat. § 268.105, subd. 1(b) (2010). A ULJ "may receive any evidence that possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs." Minn. R. 3310.2922 (2009).

Here, CAP's center manager Angela Kepp testified about the employment misconduct as reported to her by Stacy. Kepp testified that, according to Stacy, relator told the child to stop spitting water, and when he refused, relator picked up the child, flipped him on his back, held him down in the pool with her hand on his chest and told him to "cut it out or I'll dunk you." Kepp also testified that after the incident, the matter was investigated and that relator's "story changed several times during the interview

process." Although Kepp's testimony was hearsay, Minnesota law provides that hearsay can support a finding of misconduct. *See Youa True Vang v. A-1 Maint. Serv.*, 376 N.W.2d 479, 482 (Minn. App. 1985) (stating that "[h]earsay may be admissible and sufficient to support [a ULJ's] decision.") Thus, if believed, Kepp's testimony supports a finding of employment misconduct. The ULJ believed Kepp's testimony and specifically found relator's testimony to be not credible. *See Ywswf*, 726 N.W.2d at 529 (stating that this court defers to the ULJ's credibility determinations). Consequently, the ULJ's decision is supported by substantial evidence.

Relator also contends that the ULJ's determination that relator's testimony was not credible is not supported by substantial evidence and is arbitrary and capricious. But the ULJ thoroughly discussed relator's testimony and provided specific reasons why her testimony was not credible. The ULJ found that relator offered multiple versions of the events surrounding the incident and offered inconsistencies as to whether she had been disciplined in the past for inappropriately disciplining children. The ULJ further noted that relator's testimony included statements not relevant to the ultimate issue of whether relator committed employment misconduct. The ULJ found that these statements indicated that relator was frustrated with the child's behavior of spitting water and that relator's frustration level indicated that her version of the events was not credible. The ULJ's findings are reasonable, thorough, and supported by the record.

Relator further contends that the ULJ's consideration of her disciplinary record in making credibility determinations was inappropriate because the arbitration awards state that the disciplinary actions are to be stricken from her record. But relator's disciplinary

record is not limited to the instances in which relator's employment with CAP was terminated. Rather, the record reflects that relator's performance reviews contain several documented deficiencies in her performance with respect to her interaction with the children. There is nothing in the record indicating that the ULJ was prohibited from considering these deficiencies in relator's performance in rendering his decision. Moreover, the record indicates that the ULJ's consideration of relator's prior performance was minimal. Instead, the ULJ's decision focused on relator's version of the events. The ULJ compared relator's version of the events with the conduct as reported by Stacy and concluded that relator's version was not credible. Accordingly, the ULJ did not err by concluding that relator was discharged for employment misconduct.

II.

A ULJ "must ensure that all relevant facts are clearly and fully developed." Minn. Stat. § 268.105, subd. 1(b); Minn. R. 3310.2921 (2009). To comply with this statutory requirement, a ULJ must give "both parties ample opportunity to offer testimony." *Lawrence v. Ratzlaff Motor Express Inc.*, 785 N.W.2d 819, 824 (Minn. App. 2010), *review denied* (Minn. Sept. 29, 2010).

Relator argues that her "pro se appearance . . . resulted in many relevant facts left underdeveloped despite her best efforts." Specifically, relator contends that (1) "records from the previous arbitration hearings are relevant and . . . missing from evidence"; (2) the "record is . . . bare regarding the investigation conducted by CAP"; and (3) the ULJ did not adequately inquire about a statement submitted by relator addressing the

allegations. Relator contends that in light of these deficiencies in the record, the matter should be remanded for a new hearing. We disagree.

The previous arbitration hearings were not relevant to the issue before the ULJ. In fact, relator also argues in this case that the ULJ improperly considered her disciplinary record related to these arbitration hearings. Relator cannot have it both ways. Moreover, the record indicates that the ULJ heard testimony that an investigation into relator's conduct was conducted by CAP. Although more evidence and direct testimony pertaining to the investigation may have been helpful, it was not necessary to the proceeding. Finally, any potential misunderstanding of the statement provided by relator was not dispositive of the ULJ's decision. Regardless of the statement, the ULJ simply did not believe relator's testimony regarding her version of the events. A review of the transcript indicates that the ULJ asked pertinent questions, provided relator with every opportunity to submit evidence and testimony, and treated all parties fairly. Accordingly, relator is not entitled to a new evidentiary hearing.

Affirmed.