STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2151

Christopher Barott,
Relator,

vs.

Allina Health System,
Respondent,
Department of Employment and Economic Development,
Respondent.

Filed August 15, 2011
Affirmed
Stoneburner, Judge

Department of Employment and Economic Development
File No. 260394473

Christopher Barott, Blaine, Minnesota (pro se relator)

Allina Health System, Minneapolis, Minnesota (respondent employer)

Lee B. Nelson, 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

STONEBURNER, Judge

Relator challenges the determination of an unemployment-law judge (ULJ) that he was discharged from employment for misconduct and is, therefore, ineligible for unemployment benefits. Because the record supports the ULJ's decision, we affirm.

FACTS

Relator Christopher Barott is a registered nurse who was employed at respondent Allina Health System's United Hospital for approximately ten years before his employment was terminated in August 2010. In early 2010, Barott lost the badge that allowed him to record his time and make adjustments for special assignments on the hospital's timekeeping system. Barott was able to record his time using a telephone system and a computer system without a badge, and he did not attempt to replace his time-recording badge. Barott used "adjustment forms" to report when he worked as a "charge nurse," which had a different pay rate than his other nursing duties.

For the shifts Barott worked on August 6–8, 2010, he submitted adjustment forms, claiming the charge-nurse-pay rate. The forms stated that Barott worked until 7:45 a.m. each day. But he left at 7:32 on August 6 and at 7:38 on August 7, and, due to a schedule change, Barott did not work the reported shift on August 8. Barott did not believe that he was entirely responsible for correcting the error caused by the scheduling change; he considered it partly the responsibility of the timecard processor to investigate any discrepancies and enter the correct times. The other errors he attributed to his being tired.

On August 11, 2010, Barott submitted a request for pay for attending a full day of education programming before he attended the programming. Due to a family emergency, Barott was called away from the education programming an hour before it was scheduled to end. Barott informed his department secretary that he was leaving but did not correct his time record.

Barott was paid for all of the time reported, but not worked. When the hospital investigated the discrepancies between times reported and time worked, Barott's employment was immediately terminated for "a time card violation."

Respondent Minnesota Department of Employment and Economic Development (DEED) initially determined that Barott was eligible for unemployment benefits. The hospital appealed. After a hearing, the ULJ determined that Barott's employment was terminated for employment misconduct, making Barott ineligible for unemployment benefits. Barott requested reconsideration, and the ULJ affirmed the determination of ineligibility. This certiorari appeal followed.

D E C I S I O N

When reviewing the decision of a ULJ, we may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because "the findings, inferences, conclusion, or decision are . . . affected by . . . error of law; . . . unsupported by substantial evidence in view of the entire record as submitted; or . . . arbitrary or capricious." Minn. Stat. § 268.105, subd. 7(d) (2010). Whether an employee engaged in employment misconduct presents a mixed question of law and fact. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d

801, 804 (Minn. 2002). Whether an employee committed a particular act is a question of fact. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But whether a particular act constitutes employment misconduct is a question of law, which we review de novo. *Schmidgall*, 644 N.W.2d at 804.

Employees discharged due to misconduct are ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). The statute defines employment misconduct as "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).

Barott asserts that his actions do not constitute employment misconduct because, although he made errors in his timecard, he "did not knowingly or willfully commit time card fraud." Barott states that the discrepancies between his time actually worked and the time he reported on the adjustment forms for August 6 and 7 were due to the fact that he "was tired and must have mistakenly put 0745 on the [adjustment form]," despite punching out before 7:45 on both days. Barott contends that he intended to work complete shifts on August 8 and 11, but he failed to work the entire shifts due to a scheduling change and a family emergency, respectively.

A hospital representative testified that employees are not to submit timecards before their shifts are complete. Barott conceded that his submission of timecards was contrary to "common practice." The ULJ found that the hospital had the right to reasonably expect employees to accurately report their hours and identified four instances

in which relator failed to accurately report his hours. The ULJ found that these errors resulted from Barrott's failure to follow the timekeeping procedures that the hospital had the right to reasonably expect and concluded that "submission of inaccurate time forms and failure to correct known errors in his timekeeping was negligent," showing a serious disregard for employment, constituting employment misconduct. We agree. *See McKee v. Cub Foods, Inc.*, 380 N.W.2d 233, 233–34 (Minn. App. 1986) (concluding that a knowing violation of an employer's timecard policy is employment misconduct).

Barott argues that the ULJ's ruling was improper because (1) the timecard processor had a duty to contact him regarding any discrepancy in his timecard; (2) the hospital was required to begin progressive discipline before firing him; and (3) the ULJ improperly based the decision on the fact that Barott failed to promptly seek a replacement time-recording badge, when in fact, he was discharged for submitting inaccurate payroll requests.

But the record does not support Barrott's assertion that the timecard processor was responsible for identifying timekeeping errors and contacting employees about errors. Barott testified that, in the past, a previous timecard processor would "usually" contact an employee about misreported time, but Barott conceded that resolution of these issues was "partially [his] responsibility."

On appeal, Barott argues that the hospital guidelines state that "[a]ny change . . . to an employee's recorded hours . . . MUST be discussed between the time card processor and the employee before any changes occur." But this argument was not presented during the hearing. Generally, this court will not address issues not presented to and

considered by the decisionmaker. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Additionally, the record does not establish that, in this case, the timecard processor knew that a change needed to be made to Barott's reported time because Barott failed to inform anyone about the inaccurate reports.

Barott also argues that, because hospital policy states that "willful and intentional recording of inaccurate time is considered falsification of recorded time and may result in progressive disciplinary process being initiated," his employment was wrongfully terminated because the hospital did initiate progressive discipline. But an employer's failure to adhere to its own disciplinary policy is not necessarily relevant to an unemployment-benefits determination. *See Stagg v. Vintage Place Inc*., 796 N.W.2d 312, 316–17 (Minn. 2011) (explaining that, even when a handbook specifically outlines a progressive discipline policy, the employer's adherence to that policy is a question of contract rights that does not bear on whether the employee committed misconduct under the statute, and overruling the holding in *Hoemberg v. Watco Publishers, Inc.*, 343 N.W.2d 676, 679 (Minn. App. 1984), stating that an employer must follow its own disciplinary policy in determining misconduct), *review denied* (Minn. May 15, 1984)). In determining whether relator qualifies for unemployment benefits, the issue is not whether an employer was justified in discharging relator, but rather, whether relator committed "misconduct" that would disqualify relator from receiving benefits under the language of the statute. *McCourtney v. Imprimis Tech., Inc.*, 465 N.W.2d 721, 724 (Minn. App. 1991), *superseded by statute on other grounds*, Minn. Stat. § 268.095, subd. 6(a), (e) (2008*), as recognized in Hanson v. Crestliner*, 722 N.W.2d 539, 543 (Minn. App. 2009).

We conclude that the hospital's failure to pursue progressive discipline is not relevant to the determination of his eligibility for unemployment benefits.

Barott was not discharged for failing to promptly replace his lost time-recording badge. Although the ULJ's order discusses relator's failure to promptly obtain a replacement time-recording badge as further demonstrating Barott's lack of concern for his employment, the four instances of failure to accurately report hours worked sufficiently support the conclusion that Barott committed employment misconduct.

Affirmed.