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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-59

Debbie Oliver,
Relator,

vs.

Minnesota State Lottery,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed August 29, 2011
Affirmed
Worke, Judge

Department of Employment and Economic Development
File No. 25403911-3

Debbie L. Oliver, Pine River, Minnesota (pro se relator)

Minnesota State Lottery, Roseville, Minnesota (respondent employer)

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

Considered and decided by Hudson, Presiding Judge; Worke, Judge; and Ross, Judge.

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

WORKE, Judge

Relator challenges an unemployment-law judge's (ULJ) decision that she was discharged for employment misconduct and ineligible for benefits, arguing that (1) the ULJ's findings are not supported by the evidence; (2) the employer failed to give her an opportunity to correct issues raised; and (3) her employer failed to accommodate her disability. We affirm.

D E C I S I O N

Relator Debbie Oliver worked as a sales representative for respondent Minnesota State Lottery until she was discharged for repeatedly violating work-performance standards and the Lottery's code of conduct. An unemployment-law judge (ULJ) determined that relator was discharged because of employment misconduct and ineligible for benefits.

This court reviews a ULJ's denial of benefits to determine whether a petitioner's substantial rights may have been prejudiced because the findings, inferences, conclusion, or decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record. *See* Minn. Stat. § 268.105, subd. 7(d) (2010). "We view the ULJ's factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ[.] In doing so, we will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted).

An employee who is discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). "Employment misconduct means 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." *Id.*, subd. 6(a) (2010). Whether an employee engaged in employment misconduct presents a mixed question of fact and law. *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*, 721 N.W.2d at 344. Whether the act constitutes employment misconduct is a question of law reviewed de novo. *Schmidgall*, 644 N.W.2d at 804.

"Dishonesty that is connected with employment may constitute misconduct." *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305, 307-08 (Minn. App. 1994) (concluding that employee who falsely claimed to have trained store managers committed employment misconduct); *see also Frank v. Heartland Auto. Servs., Inc.*, 743 N.W.2d 626, 630-31 (Minn. App. 2008) (determining that a single act of dishonest conduct can constitute employment misconduct because employer has the right to rely on integrity of employees). When an employee knowingly violates a reasonable employer policy, that employee commits employment misconduct. *Schmidgall*, 644 N.W.2d at 806. Multiple violations of the same rule demonstrate an employee's substantial lack of concern for the employment. *See Gilkeson v. Indus. Parts & Serv., Inc.*, 383 N.W.2d 448, 452 (Minn. App. 1986) (noting that an employee's pattern of rule violations constituted misconduct).

Falsifying a timecard is also employment misconduct. *McKee v. Cub Foods, Inc.*, 380 N.W.2d 233, 236 (Minn. App. 1986).

Relator argues that the ULJ's findings are not supported by the evidence. The ULJ found that relator failed to call on retailers as required and reported working hours that she did not work. The evidence supports these findings. Relator's employment duties included: calling on, providing support to, and training retailers; ensuring that point-of-sale information was current; and promoting sales. Relator was required to complete a weekly call plan; ideally, she was expected to visit eight retailers daily and to submit an activity print-out to confirm her visits.

The Lottery installed a GPS tracking device in relator's state vehicle following complaints from retailers. The GPS reports showed that relator was not visiting the retailers she claimed to visit. Reports indicated that on March 10, 2010, relator visited four retailers, but she listed seven on her call plan and indicated that she had visited thirteen. On March 11, she visited two retailers, but she listed eight on her call plan and indicated that she had visited seven. On March 15, relator visited two retailers, but she listed three retailers on her call plan and indicated that she had visited seven. On March 26, she visited one retailer, but she listed six on her call plan and indicated that she had visited seven. On March 31, relator did not visit any retailer, but she listed six on her call plan and indicated that she had visited five.

Reports also showed hours that relator worked. On March 10, 2010, relator worked one hour and 32 minutes; on March 11, she worked one hour and 22 minutes; on March 15, she worked one hour and 16 minutes; on March 26, she worked 27 minutes; on

March 29, she worked three hours and 47 minutes; on March 31, she did not leave her home[1]; and on April 1, she worked four hours and 43 minutes. On each of these occasions, relator reported working eight-hour days. The Lottery produced these reports during the hearing before the ULJ, and the ULJ found these reports to be credible. Relator also claims that testimony from the Lottery's representative was not credible. But the ULJ specifically found the GPS reports and corresponding testimony to be credible. Conversely, the ULJ found that relator was not credible in her testimony. *See Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007) (stating that we will affirm the ULJ's credibility determinations if "[t]he ULJ's findings are supported by substantial evidence and provide the statutorily required reason for [the] credibility determination"). The ULJ relied on the GPS recordings, deeming them reliable and more accurate than relator's claims. This record supports the ULJ's findings.

Relator also argues that the Lottery did not give her an opportunity to correct any issues. But this assertion is contradicted by the fact that in August 2006 and November 2008, relator received letters of expectations because she was not adhering to call frequency and retailers complained that they were not being serviced. Thus, relator was given at least two opportunities to correct issues, which she failed to do.

Finally, relator argues that her job performance suffered due to her suffering from ADHD and a depressive disorder. She asserts that the Lottery was aware of her conditions, citing to a page in the hearing transcript. But the only thing that appears on this particular page is relator's claim that her "stress level was rising," which does not

[1] The record shows that sales representatives are not permitted to work from home.

support her assertion that the Lottery was aware of her conditions. She also claims that she requested help with these issues, and refers to another page of the hearing transcript. The transcript indicates that relator may have requested help organizing her schedule, but nowhere in the record is there any indication that relator requested accommodations for any type of disability.

The ULJ's decision that relator was discharged for employment misconduct is supported by the record. Therefore, the ULJ did not err in determining that relator is ineligible for unemployment benefits.

Affirmed.