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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-2193**

Allan C. White,  
Relator,

vs.

Teddy Bear Management, LLP,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed August 20, 2012  
Affirmed  
Worke, Judge**

Department of Employment and Economic Development  
File No. 28010667-5

Allan C. White, Minneapolis, Minnesota (pro se relator)

Teddy Bear Management, LLP, New Hope, Minnesota (respondent employer)

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

Considered and decided by Worke, Presiding Judge; Hooten, Judge; and Collins,  
Judge.\*

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

## UNPUBLISHED OPINION

**WORKE**, Judge

Relator challenges a determination by an unemployment law judge (ULJ) that he was discharged for misconduct, arguing that: (1) the evidence does not support the ULJ's finding that he threatened his supervisor; (2) the ULJ erred by crediting the employer's testimony over his testimony; and (3) he was deprived of a fair hearing. We affirm.

### FACTS

Relator Allan C. White was employed by Teddy Bear Management, LLC as a painter from August 2010 until he was discharged based on an incident that occurred on December 23, 2010. At the end of that day, White entered the office of Teresa Matthews, the property manager for two of Teddy Bear Management's properties. Matthews asked White about his progress on the apartment that he was painting, and he responded that he had more work to do. Another employee who was present, Douglas Weever, asked White why it was taking him so long to paint the apartment. White "became agitated" and began "yelling" and "screaming." White told Weever, "nobody talks to me like that" and "I'm going to f--k you up." White left the office, continued to make threats in the hallway, and went into his apartment across the hall from the office. The same night, Matthews wrote a letter discharging White and slipped it under White's apartment door.

White applied for unemployment benefits. The Minnesota Department of Employment and Economic Development (DEED) determined that White was ineligible for benefits; White appealed. The ULJ concluded that White was ineligible for

unemployment benefits because he was discharged for misconduct and affirmed its decision after White requested reconsideration. This certiorari appeal follows.

## **D E C I S I O N**

When reviewing a ULJ's eligibility decision, this court may affirm, remand 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 an error of law or are unsupported by substantial evidence. 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 Env'tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 464 (Minn. 2002).

### ***Employment misconduct***

An employee who was discharged is eligible for employment benefits unless the discharge was for employment misconduct. Minn. Stat. § 268.095, subd. 4(1) (2010). “Employment misconduct” is defined as “any intentional, negligent, or indifferent conduct, on 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 committed employment misconduct is a mixed question of fact and law.” *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). This court views factual findings in the light most favorable to the

decision and defers to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). While this court reviews questions of law de novo, "findings that are supported by substantial evidence will not be disturbed." *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007); *see also* Minn. Stat. § 268.105, subd. 7(d)(5).

An employee commits employment misconduct when the employee "intended to engage in, or actually engaged in, conduct that evinced an intent to ignore or pay no attention to the employee's duties and obligations or the standard of behavior the employer had a right to expect." *Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 206 (Minn. App. 2004) (quotation omitted), *review denied* (Minn. Mar. 30, 2004). Minnesota appellate courts have held that aggressive or disruptive behavior may constitute employment misconduct. *See Feia v. St. Cloud State College*, 309 Minn. 564, 244 N.W.2d 635 (1976) (concluding that employee who "expressed her disapproval to everyone she could" committed employment misconduct because her behavior "interfered with her job duties"); *Montgomery v. F & M Marquette Nat'l Bank*, 384 N.W.2d 602, 605 (Minn. App. 1986) (determining that an employee's rude and insubordinate conduct supported a finding of misconduct), *review denied* (Minn. June 13, 1986); *Pitzel v. Packaged Furniture & Carpet*, 362 N.W.2d 357, 357-58 (Minn. App. 1985) (holding that employee willfully or wantonly disregarded his employer's interest when he was "aggressive and offensive with customers" and his behavior was "erratic and disruptive"). This court has also recently determined that threatening behavior that only occurs on one occasion may be employment misconduct. *See Potter v. N. Empire*

*Pizza, Inc.*, 805 N.W.2d 872, 876 (Minn. App. 2011) (concluding that the ULJ did not err by determining that an employee who was discharged for poking his coworker was discharged for misconduct and observing that “the general rule [is] that violence in the workplace, however minor, is a serious violation of an employer’s reasonable expectations”), *review denied* (Minn. Nov. 15, 2011).

The ULJ found that White threatened another employee, in violation of the standards of behavior the employer has the right to reasonably expect. The record substantially sustains this finding. Two witnesses testified that White verbally threatened another employee and one witness testified that he was yelling and screaming. An employer has the right to expect an employee not to engage in this threatening behavior in the workplace.

### ***Credibility determination***

White argues that the ULJ erred by believing Matthews’ testimony over his own testimony. A ULJ must explain its reasons for crediting or discrediting a witness’s testimony if the credibility of that witness “has a significant effect on the outcome of a decision.” Minn. Stat. § 268.105, subd. 1(c) (2010). “Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Bangtson v. Allina Med. Group*, 766 N.W.2d 328, 332 (Minn. App. 2009) (quotation omitted).

The ULJ found that “[a]lthough White testified that he said something slightly different, Matthews credibly testified as to what White said because she had written it down immediately after he said it.” The record supports the ULJ’s reason for crediting Matthews’ testimony. During the evidentiary hearing, the ULJ asked Matthews, “[White]

said his statement was after he got out into the hallway that, that if he were younger, he said to Mr. Weever, in his younger days he would have f---ed you up. Is that the way you recall it?” Matthews responded, “No, Your Honor, because I wrote it down as soon as he said it.” Because the ULJ satisfied the statutory requirement that the ULJ explain his reason for crediting the testimony of a witness who has a significant effect on the outcome, we will not disturb the ULJ’s credibility determination.

***Fair hearing***

White contends that the ULJ did not give him a fair hearing because the ULJ did not consider that he was telling the truth about what happened on the day he was discharged. A ULJ is to conduct the evidentiary hearing as an “evidence gathering inquiry” and must “ensure that all relevant facts are clearly and fully developed.” Minn. Stat. § 268.105, subd. 1(b) (2010). The ULJ must “assist unrepresented parties in the presentation of evidence” and “exercise control over the hearing procedure in a manner that protects the parties’ rights to a fair hearing.” Minn. R. 3310.2921 (2011). A hearing is considered fair if both parties are afforded the opportunity to give statements, cross-examine witnesses, and offer and object to exhibits. *Id.*; *Ywswf*, 726 N.W.2d at 529-30.

White has not established that the ULJ failed to give him a fair hearing. The ULJ provided both parties with the opportunity to give statements, to cross-examine the opposing parties’ witnesses, and to offer exhibits. White’s contention appears to be based on the ULJ’s decision to credit Matthews’ testimony and partially discredit his own testimony. We will not disturb a ULJ’s credibility determinations.

**Affirmed.**