STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0620

Christopher Labalestra,
Relator,

vs.

The Columns Resource Group, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed December 31, 2012
Affirmed
Hooten, Judge

Department of Employment and Economic Development
File No. 28987628-3

Christopher Labalestra, Coon Rapids, Minnesota (pro se relator)

The Columns Resource Group, Inc., Minneapolis, Minnesota (respondent employer)

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

Considered and decided by Rodenberg, Presiding Judge; Connolly, Judge; and Hooten, Judge.

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

HOOTEN, Judge

Relator challenges the determination of the unemployment-law judge (ULJ) that he was terminated from his employment for employment misconduct and is therefore ineligible for unemployment benefits. Relator argues that his termination resulted from discrimination against him as a disabled individual or as retaliation for asking for accommodation for his disability, that any insubordination was merely a single incident, and that the ULJ failed to conduct the hearing in a fair manner. Based on our deference to the ULJ's findings and credibility determinations, we affirm.

FACTS

Relator Christopher Labalestra began working for the Columns Resource Group (CRG) on March 22, 2011, as the director of investment operations in developing training programs for investment advisors and other operations staff. After his discharge on December 5, 2011, relator applied for unemployment benefits and the Department of Employment and Economic Development (DEED) issued a determination of ineligibility. Relator appealed this determination, and a telephonic hearing was held before a ULJ.

Testimony at the hearing came from relator and Amanda Ryan, relator's direct supervisor. When asked about the reason for relator's termination, Ryan testified that she sent relator an e-mail on November 16, 2011 regarding his supervision of employees in his department, after which relator came to her office and "basically exploded on [her] and told [her] he wasn't go[ing to] deal with [her] anymore and was very aggressive." Ryan stated that relator did not threaten her, but that he did "raise[] his voice and was

very aggressive in his manner." Ryan stated that relator had "always been very argumentative."

Ryan met with relator again on the following Monday, November 21, 2011. This meeting was to discuss "the entire situation," the status of a program that had been assigned to relator, CRG's expectations, and the deficiencies in relator's performance. In addition, Ryan "mentioned the conversation that [she and relator] had and [] discussed the fact that that's not an appropriate way to conduct yourself." Ryan testified that this was "the first discussion about his interactions with coworkers, but it was definitely not the first conversation discussing his performance." An e-mail sent to relator recapping this meeting raised concerns that relator was not completing his assigned tasks in a timely manner.

On December 1, 2011, Ryan again met with relator and Craig Volk, who was "indirectly" relator's supervisor. They discussed three topics: relator's work product, accommodations for his disability, and his relationship with a subordinate employee. As to the first topic, relator's primary job duty was to create a "turnkey" training program, which relator previously stated that he had completed. Relator was asked to show his work product from his time with the company at this meeting, but, according to Ryan, they "discovered . . . that he had done nothing we had asked for or that he said he had completed." As to the second topic, relator stated in a previous e-mail that he had a disability, specifically a sight deficiency, and asked for accommodations. Although Ryan had previously inquired regarding his necessary accommodations, at the meeting, she again "asked him for the list of what he needed." Finally, Ryan stated that relator's sole

directly reporting employee, Melissa, came to her on November 29, 2011, "on the verge of tears[,] stating that the way [relator] treated her was not fair and . . . she couldn't handle working with him anymore, he was very disrespectful to her and condescending and rude." At the conclusion of the December 1 meeting, it was agreed that Volk would meet with Melissa to determine the facts and explore relator's accusation that Ryan had approached Melissa to get her angry with relator because Ryan did not like him. Ryan testified that it was "very clear" that relator was not supposed to interact with Melissa until Volk spoke with her. Further, Ryan testified that she told relator that "his behavior toward [her] was insubordinate."

Despite the agreement and contrary to Ryan's directives, relator approached Melissa after the meeting and "had a heated discussion," which prompted Melissa to return to Ryan's office to say that she was uncomfortable working with relator. The next day, a Friday, relator e-mailed Melissa and copied Volk, to say that he "attempted to have" a conversation with her but that it had been "decided that it would be best" to have Volk talk with her. Later that same day, Ryan relieved relator of his management duties over the department in which Melissa worked "until we had time to sit down and figure out what the next steps need to be." At that point, relator "started arguing about how it was Melissa's fault." On Sunday night, December 4, relator e-mailed Ryan to ask her to "revisit [her] decision" to relieve him of his management duties. On Monday, December 5, 2011, Ryan met with Volk and a managing partner to discuss the situation, at which time they decided "that it was time that we part company with [relator], his behavior was insubordinate, disrespectful, combative, argumentative and he can't work well with

people." Ryan testified that this decision resulted from "the buildup of several incidences and the fact that he was only willing to try to work with us after nine months of having issue[s]."

As to realtor's disability, Ryan stated that she was never informed of the specifics of relator's disability or what accommodations he required. Nothing in the record indicates that relator formally informed Ryan or CRG of his disability or need for accommodations, but it is clear that the company was at least informally aware that relator needed some vision-related accommodation. Ryan testified that she first became aware of relator's potential disability in June 2011, when two employees came to her and inquired about relator sitting very close to his computer monitor. At that time, Ryan offered to get relator a bigger computer monitor. At the same time, relator requested to be moved into a closed office, both for disability and privacy reasons. Ryan testified that because all of the offices had glass walls without visual privacy, she "didn't put the two and two together that that would solve that issue." Also in June 2011, there was some conversation that relator needed the print in a powerpoint presentation to be larger for him to read it.

The e-mail in which relator nominally recapped the November 16, 2011 conversation with Ryan contained accusations that Ryan was "fishing for things to use against [him]" because she did not want "someone with a disability" at the office, that relator "had taken a lot of insults and bullying" from Ryan since after she found out about his eyesight issues, and that Ryan had insulted relator so many times and spoken down to him so often that he was afraid to even discuss accommodations with her. He also

indicated that he feared "being laughed at" and having Ryan use the information about his disability against him. Ryan's notes regarding this e-mail indicate that she spoke to an attorney about potential disability issues and asked relator to provide a list of desired accommodations. Ryan's e-mail in response to relator stated that she was willing to work with relator to accommodate his condition, even if it was not an official disability. Ryan testified that she asked relator for a list of his desired accommodations during their November 21 and December 1 meetings.

Relator disputed Ryan's characterization of these meetings. As to the meeting on November 16, 2011, relator testified that Ryan questioned his use of vacation and sick time, "but ultimately what happened is [] that she started working herself into a fit towards [him] and [he] didn't want to get into an argument with her, . . . so [he] moved to end the conversation, . . . and as [he] was leaving she . . . said she's done bullying [him] for today." Relator agreed that Ryan had asked him to provide a list of his requested accommodations at some point, though he was non-specific as to the date on which this occurred. However, relator testified that Ryan became aware of his disability in May 2011, when she witnessed him using a magnifier. Relator further testified that this led to the conversation in June 2011 about getting a larger monitor and an enclosed office.

Relative to the December 1, 2011 meeting, relator testified that he brought some of his completed work to show Ryan and their supervisor, but that the conversation focused on the complaint from Melissa about their personality conflict. The central difference between relator's account of the meeting and Ryan's account is that relator testified that "they specifically did not say on December 1 not to talk to Melissa," and

that Ryan "did not make [it] clear to" him that he was not to talk to Melissa. Rather, relator testified that once they told him that Volk was going to speak with Melissa, he asked for "guidelines on exactly what [Ryan] wanted me to do." According to relator, Ryan responded: "[I]t's your problem, . . . if you can't work it out with Melissa then that's an issue." Further, relator testified that he went to a dinner with Volk that evening at which time Volk stated that he would talk to Melissa. Finally, relator testified that it was not until Friday, December 2, that he was told not to talk to Melissa. However, Ryan, when asked again by the ULJ, testified that the crux of the December 1 meeting addressed Melissa's complaints, and that the ultimate decision was to have Volk talk to Melissa because relator expressed his belief that Ryan created the situation.

In a detailed and well-reasoned order, the ULJ found that prior to December 1, 2011, CRG had concerns about relator's interaction with other employees and that relator was "specifically told not to talk with Melissa" until after Volk met with her. Further, the ULJ decided that "[t]o the extent that the parties disagreed, Ryan's testimony was more credible than [relator's]." As a result, the ULJ decided that "[w]hen [relator] confronted Melissa on December 1, 2011 after being specifically told not to, he was insubordinate and violated CRG's reasonable expectations" about his behavior and further concluded that relator was terminated for employment misconduct, not because of his disability. The ULJ affirmed the decision on reconsideration and relator now appeals by writ of certiorari.

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) (2012). "Questions of law are reviewed de novo, while 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). 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). "Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Bangtson v. Allina Med. Grp.*, 766 N.W.2d 328, 332 (Minn. App. 2009) (quotation omitted).

An employee who was discharged is eligible for employment benefits unless the discharge was for employment misconduct. Minn. Stat. § 268.095, subd. 4(1) (2012). "Employment misconduct" is defined 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." *Id.*, subd. 6(a) (2012). "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). Whether the employee committed the act is a fact question.

Skarhus, 721 N.W.2d at 344. But whether the employee's act constitutes employment misconduct is a question of law, which is reviewed de novo. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011).

In general, refusing to comply with an employer's reasonable policies and requests is disqualifying misconduct. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). "An employer has a right to expect that its employees will abide by reasonable instructions and directions." *Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 206 (Minn. App. 2004), *review denied* (Minn. Mar. 30, 2004).

A significant portion of relator's brief argues that Ryan's testimony was unreliable, incredible, or inaccurate. But the ULJ made credibility determinations, to which this court defers, and the ULJ's findings of fact are amply supported by Ryan's testimony. Specifically, the ULJ found that relator was directly instructed to stay away from Melissa until Volk could speak with her. It is undisputed that relator spoke to Melissa after the meeting in which he was instructed to avoid contact with Melissa. Because the facts found by the ULJ indicate that relator "confronted Melissa about her complaints" directly after he was specifically told not to talk with her until after Volk met with her, we agree with the ULJ that relator was insubordinate.

"The Minnesota courts have held that an employee's insubordination may constitute misconduct." *Deike v. Gopher Smelting*, 413 N.W.2d 590, 592 (Minn. App. 1987); *see also Snodgrass v. Oxford Props., Inc.*, 354 N.W.2d 79, 80 (Minn. App. 1984) (holding that an employee's insubordinate behavior can constitute employment misconduct); *see also Schmidgall*, 644 N.W.2d at 804 ("As a general rule, refusing to

abide by an employer's reasonable policies and requests amounts to disqualifying misconduct."). The request for relator to avoid contact with an employee who recently complained about how he treated her was not unreasonable, particularly when that request was only temporary and was meant to allow the company to follow up on complaints made by relator himself. Under these circumstances, relator's failure to abide by CRG's request that he not talk to Melissa was insubordination.

Relator argues that this incident of insubordination is a single incident, and it therefore does not evidence a serious violation of standards of behavior or a substantial lack of concern for employment. *See* Minn. Stat. § 268.095, subd. 6(d) (2012) ("If the conduct for which the applicant was discharged involved only a single incident, that is an important fact that must be considered in deciding whether the conduct rises to the level of employment misconduct[.]"). But this is not a single, isolated incident because it follows a pattern of aggressive or combative behavior. Specifically, relator was warned about his interactions with other employees and supervisors during the November 16, 2011 meeting. Further, the ULJ found that "CRG had concerns about the way [relator] was interacting with employees, including his subordinate Melissa" prior to December 1, 2011. Considering the minimal nature of the request, the potential detrimental effects of contacting Melissa when asked not to, and the seriousness of his allegations against Ryan and Melissa, Labalestra's actions were a serious violation of the standards of behavior reasonably expected by CRG.

Relator also challenges the ULJ's finding that he was terminated for insubordination rather than because of his disability. This finding is supported by Ryan's

testimony that she was willing to work with relator to accommodate his disability, whether official or not, and by the e-mails between Ryan and relator during the relevant period. Even if relator is correct that Ryan treated him poorly because of his disability, that does not support an interpretation of the facts that relator was discharged primarily because of his disability. Rather, CRG fulfilled all of relator's requested accommodations during his employment, including providing a larger monitor for him and placing him in a physically separated office.

Relator further argues that his discharge as a result of his disability violates the Americans with Disabilities Act. However, that issue was not before the ULJ, whose duties are limited to determinations about eligibility for unemployment benefits and related issues. *See* Minn. R. 3310.2901 (2011) (indicating the types of issues covered by Minn. R. 3310.2901-.2924 (2011)); *see also* Minn. Stat. §§ 268.043 (2012) (allowing an appeal of a determination of coverage to a ULJ), 268.105, subds. 1, 2 (authorizing a ULJ to conduct hearings and issue decisions on appeals from DEED determinations); *McKee v. Ramsey Cnty.*, 310 Minn. 192, 195, 245 N.W.2d 460, 462 (1976) ("An administrative agency's jurisdiction, . . . is limited and is dependent entirely upon the statute under which it operates."). Further, relator's application for unemployment benefits does not preclude a suit against CRG for violations of the ADA. *See* Minn. Stat. § 268.0675 (2012) ("Use of any remedy under this chapter for the collection of any amount due from an employer or an applicant does not constitute an election of remedy to the exclusion of any other available remedy."). But an unemployment coverage appeal is not the proper forum for such claims and the ULJ properly declined to address them.

Finally, relator argues that the ULJ failed to exercise control over the hearing such that all pertinent facts were gathered. A ULJ is to conduct the evidentiary hearing as an evidence-gathering inquiry, not an adversarial proceeding, and must ensure that all relevant facts are fully developed. Minn. Stat. § 268.105, subd. 1(b) (2012). In doing so, the 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." Minn. R. 3310.2922 (2011). "A judge is not bound by statutory and common law rules of evidence." *Id.* The ULJ must control the hearing in such a way that the parties' rights to a fair hearing are protected. Minn. R. 3310.2921 (2011). The ULJ has an obligation to recognize and interpret the parties' claims, especially when one of the parties is pro se. *Miller v. Int'l Express Corp.*, 495 N.W.2d 616, 618 (Minn. App. 1993). Despite arguing that the ULJ failed to control the hearing or gather all pertinent facts, relator does not identify any information he was unable to introduce or identify any legal theories he was not able to present at the hearing. Nor does relator show how any alleged errors prejudiced his case.

Giving deference to the ULJ's findings regarding credibility, there is substantial evidence supporting the determination that relator was discharged for misconduct, not because of his disability. Relator is therefore ineligible for employment benefits.

Affirmed.