STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0815

Christopher Evans,
Relator,

vs.

Life by Design, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed December 24, 2012
Affirmed
Larkin, Judge

Department of Employment and Economic Development
File No. 29098414-3

Christopher Evans, Fridley, Minnesota (pro se relator)

Life by Design, Inc., Fridley, Minnesota (respondent)

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

Considered and decided by Stoneburner, Presiding Judge; Peterson, Judge; and Larkin, Judge.

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

LARKIN, Judge

In this certiorari appeal, relator challenges an unemployment-law judge's (ULJ) determinations that relator failed to show "good cause" for failing to participate in the evidentiary hearing and that relator is ineligible to receive unemployment benefits because he was discharged from employment for misconduct. We affirm.

FACTS

Relator Christopher Evans worked part-time as a client-support specialist for respondent Life by Design Inc. (LBD), providing care for vulnerable adults, beginning in January 2010. LBD terminated his employment in October 2010 for "reading text books and conducting personal business" at work, in violation of LBD's employment policies.

Evans established an unemployment benefits account with respondent Minnesota Department of Employment and Economic Development (DEED). A DEED clerk issued a determination of eligibility. LBD appealed that decision, claiming Evans was ineligible for benefits because he was discharged for employment misconduct. A ULJ held a telephonic evidentiary hearing on the issue. Evans did not participate in the hearing by telephone, but he submitted documents for the ULJ's consideration. The ULJ noted that the documents did not deny LBD's assertion that Evans continued to read textbooks at work in violation of LBD's policy, even though he had been informed that this conduct was unacceptable.

The ULJ concluded that Evans's conduct was "a serious violation of the standards of behavior the employer had a right to reasonably expect" and "displayed a substantial

lack of concern for the employment." Thus, the ULJ determined that Evans had been discharged for employment misconduct and was ineligible for unemployment benefits. The ULJ's decision resulted in an overpayment determination of $7,122.

Evans requested reconsideration and "a chance to talk to a judge myself." Construing this as a request for an additional evidentiary hearing, the ULJ denied the request and affirmed his determination that Evans was not eligible for unemployment benefits. This certiorari appeal follows.

D E C I S I O N

I.

On appeal, Evans requests "reconsideration on the decision made by the unemployment law judge," explaining that he is "very sorry for missing the phone call and now realize[s] the severity of the case and that it does not only affect [his] future benefits but [his] past benefits as well." We construe this as an argument that the ULJ erred in denying his request for an additional hearing.

"A reviewing court accords deference to a ULJ's decision not to hold an additional hearing and will reverse that decision only for an abuse of discretion." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006). If upon a request for reconsideration, the party who failed to participate establishes "good cause" for failing to participate, the ULJ must order a new evidentiary hearing. Minn. Stat. § 268.105, subd. 2(d) (2012). Good cause is defined as "a reason that would have prevented a reasonable person acting with due diligence from participating at the evidentiary hearing." *Id.*

Evans provided the following reasons in support of his request for an additional hearing. First, Evans stated that the thought of going through a hearing against his former employer gave him a "panic attack." Second, he assumed his employer would have an attorney at the hearing and he believed he was "no match" because he did not "understand the law aspect behind it." Third, Evans argued that he did not know that he could be required to repay any overpaid benefits. And fourth, Evans asserted that he could not participate in the hearing because he had a scheduled class at the same time as the hearing.

The ULJ did not abuse his discretion by concluding that Evans's anxiety regarding the hearing and his belief that he had little chance of prevailing did not constitute good cause for failing to participate in the hearing.[1] Although these reasons help illuminate Evans's decision to limit his participation to his submission of documents, Evans does not explain how his anxiety or his assessment of his chance of prevailing prevented him from participating in the hearing. Rather, the reasons suggest that Evans considered the pros and cons of participation and simply chose not to participate. Without further explanation as to how his anxiety and pessimistic assessment of his case prevented him from participating, such reasons do not constitute good cause. *See Petracek v. Univ. of Minnesota*, 780 N.W.2d 927, 930 (Minn. App. 2010) (holding that the fact of being jailed alone did not establish good cause because the relator failed to show "why the

[1] Although Evans submitted written documents that the ULJ referenced in his decision, written submissions are not considered "participation" in the context of a request for reconsideration by a party who failed to participate in the evidentiary hearing. *See* Minn. Stat. § 268.105, subd. 2(d) ("Submission of a written statement at the evidentiary hearing . . . does not constitute participation for purposes of this paragraph.").

circumstance of his being jailed was 'a reason that would have prevented a reasonable person acting with due diligence from participating at the evidentiary hearing'").

The ULJ also appropriately exercised his discretion in rejecting Evans's remaining two reasons for not participating in the hearing: that he had a scheduling conflict and that he did not know that the hearing could result in an overpayment determination. DEED is required to mail notice of the hearing to each party at the last known address at least ten days before the scheduled hearing; the notice must specify the date and time of the hearing, the name of the assigned ULJ, and the issues to be considered at the hearing. Minn. R. 3310.2910 (2011). The record here contains a notice of hearing, entitled "Notice of Appeal," addressed to Evans. The notice states: "Please contact the Appeals Office immediately at the telephone numbers listed below if you need to reschedule your hearing . . . ." and "If the decision holds you ineligible for benefits that have already been paid, you will be overpaid. Overpaid benefits must be repaid and may be recovered by legal action."

Evans does not claim that he did not receive the Notice of Appeal. Because he does not dispute receipt of the notice, we presume that he received it. *See Johnson v. Metro. Med. Ctr.*, 395 N.W.2d 380, 381-82 (Minn. App. 1986) (reasoning that failure to dispute address and receipt of other documents mailed to address supports a finding that relator received notice of decision for purposes of determining whether appeal was timely). Thus, the record shows that Evans was notified that he could reschedule the hearing and that an overpayment determination could result from the hearing.

In summary, the ULJ did not abuse his discretion by denying an additional hearing.

II.

Evans argues that LBD "did not discharge [him] in a fair manner," that the infractions in the record were "[s]mall situations . . . blown completely out of proportion," that other staff members engaged in the same conduct, and that his supervisors "targeted [him] specifically." We construe these assertions as an argument that Evans did not engage in employment misconduct.

An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2012). 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) (2012).

Whether an employee committed employment misconduct is a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether a particular act constitutes employment misconduct is a question of law, which an appellate court reviews de novo. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). Whether the employee committed the particular act, however, is a question of fact. *Id.* This court reviews the ULJ's factual findings "in the light most favorable to the decision." *Skarhus*, 721 N.W.2d at 344. We defer to the ULJ's

credibility determinations, and will not disturb those factual findings when the evidence substantially sustains them. *Id.*

The ULJ found that LBD has a policy that prohibits its employees from conducting personal business at work, because engaging in such conduct while billing for client-care time could expose LBD to charges of Medicare Assistance fraud. The ULJ found that Evans violated this policy on several occasions by, for example, reading a textbook and doing homework. The ULJ also found that Evans was notified that he was not allowed to engage in this conduct.

The record supports the ULJ's finding that Evans was notified that he was not allowed to conduct personal business at work. The record shows that LBD trained Evans on the company's policy and procedure manual in January 2010. The manual states that "conducting personal business while working" is prohibited conduct that "may result in disciplinary action or termination." The record further shows that in August 2010 Evans "was retrained and given specific instructions that he could not do personal activities while working," and that to do so would violate the company's policy and procedure as well as the Medicare Assistance fraud guidelines. A supervisor issued additional verbal warnings to Evans after observing him doing homework on the job on August 27 and October 12.

Evans argues that LBD exaggerated the extent of his alleged policy violations. For example, Evans claims that "reading during down time was acceptable" in situations in which LBD's clients did not need direct staff assistance. Evans admits that he knew that LBD did not allow him to do homework at work, but he asserts that he did not know

that reading a book is considered homework, drawing a distinction between reading textbooks and doing homework. Evans's attempt to distinguish between reading a textbook and doing homework is unavailing: both activities are *personal* activities that are prohibited under LBD's policies. Evans's knowing violation of those policies constituted employment misconduct. *See 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.").

Evans argues that he was not discharged "in a fair manner" and that other employees read personal materials at work. These arguments are unavailing. We are not concerned with the manner of Evans's discharge but rather whether he was discharged for employment misconduct. *See Auger v. Gillette Co.*, 303 N.W.2d 255, 257 (Minn. 1981) ("We are only considering whether . . . there should be unemployment compensation . . . ."). Similarly, the conduct of LBD's other employees is not relevant to our decision on appeal. *See Sivertson v. Sims Sec. Inc.*, 390 N.W.2d 868, 871 (Minn. App. 1986) ("Whether or not other employees violated those same rules and were disciplined or discharged is not relevant here."), *review denied* (Minn. Aug. 20, 1986).

In summary, the ULJ did not err in determining that Evans was discharged for employment misconduct and that he was therefore ineligible for unemployment benefits.

III.

Evans argues that his financial circumstances are dire and that he is unable to repay the $7,122 in overpaid benefits. He therefore requests relief from the repayment obligation. We have no reason to doubt Evans's representations regarding his current

financial hardships. Yet, there is no basis for this court to provide relief. An applicant who is paid unemployment benefits to which he or she is not entitled must repay them. Minn. Stat. § 268.18, subd. 1(a) (2012). Moreover, equitable considerations, such as financial hardship, are irrelevant when determining if a terminated employee is eligible for unemployment benefits. *See* Minn. Stat. § 268.069, subd. 3 (2012) (providing that Minnesota's unemployment-insurance statute does not permit equitable denial or allowance of unemployment benefits).

Affirmed.