STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1100

In the Matter of the Proposed Discharge of Peter Palmer
from the Hennepin County Medical Examiner's Office.

Filed March 4, 2013
Reversed
Schellhas, Judge

Hennepin County Medical Examiner's Office
File No. OAH #58-6220-22458-3

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Considered and decided by Kirk, Presiding Judge; Ross, Judge; and Schellhas, Judge.

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

SCHELLHAS, Judge

Relator-employer challenges the administrative-law judge's (ALJ) reversal of respondent-employee's discharge and the ALJ's reinstatement of respondent-employee, arguing that the ALJ's decision is unsupported by substantial evidence in view of the entire record, arbitrary and capricious, and against public policy. Because we conclude

that the ALJ's decision is unsupported by substantial evidence in view of the entire record, we reverse.

FACTS

From January 1992 until November 2011, relator-employer Hennepin County Medical Examiner's Office (MEO) employed respondent-employee Peter Palmer in various positions as a part-time and full-time, permanent and intermittent employee.[1] In May 2007, the MEO hired Palmer as a full-time, permanent medical examiner's investigator and, in November 2011, the MEO discharged him.

The event that precipitated Palmer's discharge occurred on October 2, 2011, between approximately 2:00 a.m. and 2:30 a.m., while Palmer was working the night shift at the MEO's secured facility in downtown Minneapolis. At that facility, nonemployees cannot proceed beyond an entrance vestibule without being "buzz[ed] . . . in" or permitted access by a key card, and bullet-repellant glass separates persons in the vestibule from any MEO staff. On October 2, Palmer was the only investigator at the facility and was responsible for supervision of a health-care trainee, who was also at the facility during Palmer's shift. No other employees were present in the facility. At approximately 2:04 a.m., Palmer escorted two adult, male strangers into the

[1] In October 2006, the chief medical examiner congratulated Palmer on reaching his 20-year employment anniversary with Hennepin County and complimented him on his "strong, quality work." In his May–July 2007 performance review, Palmer received a two on a one-to-five rating, indicating that he "need[ed] improvement." In three of his performance reviews between August 2007 and November 2009, Palmer received a three, indicating that he was "fully capable," and in his November 2009–November 2010 performance review, he received a two, indicating that he "need[ed] improvement."

secure area of the facility. Palmer had met the men while smoking a cigarette outside the facility. Using his security key card, Palmer brought the men through the vestibule into the body-processing room and escorted them out of the building at approximately 2:08 a.m. Palmer did not re-enter the facility until approximately 2:23 a.m. At approximately 3:00 a.m., Palmer related the incident to the health-care trainee, who had been asleep while the strangers were in the facility and while Palmer drove the strangers to their requested destination. On October 5, 2011, the health-care trainee informed Palmer's supervisor about the incident.

On October 13, an MEO employee, formerly an MEO health-care trainee, informed the MEO office administrator about a separate incident that occurred while the trainee worked with Palmer at the facility:

> [Palmer] was outside the office with [the trainee] on the front steps on an overnight shift when a stumbling person (believed to be somewhat intoxicated) happened by . . . . The person asked for directions to a nearby hotel . . . and [the trainee] looked up this information on his phone while outside the office. The person was directed to where to walk to reach the hotel but [Palmer] brought this person into the office and found the same information via the computer on desk 1 in the investigator's office. The person was also given a tour of the office and [Palmer] then took the person to his hotel via [Palmer]'s personal vehicle. [The trainee] felt the time that it took [Palmer] to return to the office was too lengthy . . . .

On October 21, after the chief medical examiner (CME), office administrator, and Palmer's supervisor viewed security-camera footage of the October 2 incident, Palmer's supervisor and the office administrator interviewed Palmer. After the interview, the office administrator gave Palmer a paid-administrative-leave letter; instructed him to return his

identification card, access-key card, and drawer key; and told him that he "would be escorted from the building."

On October 26, the MEO gave Palmer a notice-of-intent-to-dismiss letter, informing him that the office intended to dismiss him based on his October 2 "misconduct," "past disciplinary history," and "blatant disregard for the safety and security of fellow employees and medical examiner data and evidence." The dismissal notice states that Palmer, while working the overnight shift on October 2, "escorted two (2) strangers on foot from outside the facility into the secured, non-public areas of the building at 2:04 a.m."; did not inform "another employee . . . present . . . of the presence of these visitors"; and that "the secured areas where these visitors were taken by [Palmer] contained confidential medical examiner data and evidence." The notice further states that Palmer "escort[ed] the two strangers out of our building's employee (garage) entrance and into [his] personal vehicle parked in our lot at approximately 2:10 a.m."; "dr[o]ve off the premises in [his] personal vehicle with the strangers"; and "return[ed] to the office and park[ed] [his] car in the lot [at] 2:23 a.m., with the two strangers no longer with [him]." The notice also describes Palmer's past disciplinary history, including (1) an October 2008 written reprimand for "inappropriately refusing a body and returning it to the [county medical center]," (2) a March 2009 oral reprimand for "not following acceptable investigation practices by leaving a body bag containing decomposition juice at a death scene," (3) a January 2010 written reprimand for "sending an unprofessional email to [the county's human-resources director] not long after receiving performance coaching for an earlier unprofessional email sent to the [county's administrator] in

November 2009," and (4) a June 2010 written reprimand for "inappropriately discarding an article of decedent's clothing."

On October 28, an MEO employee, formerly an MEO health-care trainee, informed Palmer's supervisor about an October 20 incident in which Palmer "left the office for a short amount of time" and did not inform his coworker that he was leaving. The coworker reported that Palmer told the coworker that Palmer "had gone to the Occupy Minnesota protest to give Tootsie-Pops to the protestors" and that, "[a]pparently, the protestors then thanked the Hennepin County Medical Examiner's Office over the live news feed online that he was viewing once back at the office."

Palmer appealed his proposed dismissal to the CME, who held an administrative hearing on November 1. Palmer argued at the hearing that the two strangers, whom he escorted into the secured MEO facility on October 2, were Dutch farmers visiting from Holland whom he met during a cigarette break; that he escorted the two strangers into the office and looked up the address of their hostel because the strangers said that they were lost; and that Palmer drove the strangers to their hostel because they were "foreigners" who "could not understand" Palmer's walking directions, the walk would have been dangerous because it would have been through "dangerous neighborhoods" at around 2:30 a.m., and the Minneapolis Police Department declined Palmer's telephone request to provide the strangers assistance. The CME upheld Palmer's dismissal, effective November 2, 2011.

Palmer noticed an appeal to the Minnesota Office of Administrative Hearings (OAH). An ALJ conducted a four-day hearing in March 2012; reversed Palmer's discharge; and reinstated his employment, effective May 30, 2012.

This appeal follows.

D E C I S I O N

The MEO appeals from the ALJ's reversal of Palmer's discharge and the ALJ's reinstatement of Palmer.

Under Minnesota Statutes section 383B.38, subdivision 1a(e) (2012):

> If the administrative law judge finds, based on the record, that the action appealed was not taken by the department head for just cause, the employee shall be reinstated to the position, or an equal position within the same department, without loss of pay. If the administrative law judge finds that just cause exists for the disciplinary action, it shall affirm or uphold the action of the department head, or, if the employee has asserted and the hearing record establishes extenuating circumstances, the administrative law judge may reinstate the employee, with full, partial, or no pay, or may modify the department head's action by substituting a lesser disciplinary action.

See Minn. Stat. § 14.63 (2012) (permitting "[a]ny person aggrieved by a final decision in a contested case . . . to judicial review of the decision" by timely "fil[ing] with the Court of Appeals" "[a] petition for a writ of certiorari").

As a permanent-status employee with the MEO, Palmer could be discharged only for "just cause" under Minnesota Statutes section 383B.38, subdivision 1 (2012), and Hennepin County Human Resources Rule 17.3. Section 383B.38, subdivision 1, prohibits the county from "suspen[ding], demot[ing], or discharg[ing]" "permanent employee[s] in

the classified service . . . except for just cause." Minn. Stat. § 383B.38, subd. 1; *see* Minn. Stat. §§ 383B.27, subd. 8 (defining "'[c]lassified service'" as "the service which includes all positions except in the unclassified service"), 383B.32, subd. 2 (listing positions comprising "unclassified service," not including permanent county medical examiner's investigators); 390.05 (permitting medical examiner to appoint "investigators to the classified service") (2012); *cf.* Minn. Stat. §§ 383B.021–.99 (2012) (entitled "Hennepin County"). Hennepin County Human Resources Rule 17.3 similarly provides that "[a]n employee who has permanent status . . . shall be dismissed . . . only for just cause."

The supreme court has construed "[c]ause or sufficient cause" to mean "legal cause" that "specially relates to and affects the administration of the office," "relat[ing] to the manner in which the employee performs its duties"; "touch[es] the qualifications of the officer or his performance of its duties, showing that he is not a fit or proper person to hold the office"; and is "restricted to something of a substantial nature directly affecting the rights and interests of the public." *Leininger v. City of Bloomington*, 299 N.W.2d 723, 726 (Minn. 1980) (quotations omitted). "In the absence of any statutory specification the sufficiency of the cause should be determined with reference to the character of the office, and the qualifications necessary to fill it." *Id.* (quotation omitted). Hennepin County Human Resources Rule 17.3 requires that "just cause" for discharge be based on one of several grounds, including "incompetency/failure to meet job performance requirements . . . [and/or] misconduct."

The ALJ concluded that Palmer's "past disciplinary history, the Occupy Minnesota incident, and aspects of the Dutch farmer incident justify discipline, but do not

constitute just cause to terminate [Palmer] from his position," finding that the MEO "grossly exaggerated the Dutch farmers incident." The ALJ reasoned that the two-strangers incident "did not violate a clear MEO policy" and found that the two strangers "did not have any access to confidential data" during their "four-minute visit" to the facility. The ALJ described the MEO's safety concerns implicated by the two-strangers incident as "inflated" and referred to the MEO's view of the incident as a "what-could-have-happened view of the incident." The ALJ further reasoned that Palmer determined that the two strangers "were harmless," noting that Palmer "spoke with the farmers and made a judgment call that they did not pose a risk," suggesting that Palmer's "judgment call" was appropriate under the circumstances. The ALJ concluded "that, while [Palmer] could have used better judgment in assisting the Dutch farmers by using the reception area computer, the way in which he handled the event is not grounds for dismissal," finding that Palmer "had no idea he had access to the reception-area computer, which is why he did not use it."

We "presum[e]" that the OAH's decision is correct and defer to the OAH's "conclusions in the area of [the OAH's] expertise." *In re Review of 2005 Annual Automatic Adjustment of Charges for All Elec. & Gas Utilities*, 768 N.W.2d 112, 119 (Minn. 2009); *see Fine v. Bernstein*, 726 N.W.2d 137, 142 (Minn. App. 2007) (applying presumption of correctness to OAH), *review denied* (Minn. Apr. 17, 2007). But we may reverse an ALJ's decision when a petitioner's "substantial rights . . . may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are . . . unsupported by substantial evidence in view of the *entire record* as submitted."

Minn. Stat. § 14.69(e) (2012) (emphasis added); *see Minneapolis Police Dep't v. Minneapolis Comm'n on Civil Rights*, 425 N.W.2d 235, 239 (Minn. 1988) (stating that "[t]he substantial evidence standard applies generally to agency adjudications" and requires "the reviewing court [to] affirm the agency's decision if, in considering the *entire record*, it is supported by evidence that a reasonable mind might accept as adequate" (emphasis added)). 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 Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002) (quotation omitted). Generally, "[i]n [OAH] employee disciplinary actions, the . . . political subdivision initiating the disciplinary action shall have the burden of proof" to prove "the facts at issue by a preponderance of the evidence." Minn. R. 1400.7300, subp. 5 (2011).

The ALJ concluded that just cause did not support the MEO's decision to discharge Palmer. Because we conclude that the ALJ's conclusion is unsupported by substantial evidence in view of the entire record, we reverse.

Two Strangers

We first note that at the March 2012 hearing, the CME protested Palmer's attorney's continuous reference to the two strangers as "tourists" and emphasized that the CME did not know that they were tourists, stating, "[W]e have no idea who those individuals are." We also note that, based on our review of the record, Palmer's only stated basis for believing that the two strangers were Dutch farmers is that they *told him*

that they were "dairy farmer[s] in Holland"; they had "heavy accent[s]"; and, as Palmer testified, he "returned them to an international hostel." Yet, throughout her decision, the ALJ referred to the two strangers as "Dutch tourists" and "Dutch farmers." The ALJ's implicit finding that the two strangers were Dutch tourists and Dutch farmers is unsupported by substantial evidence, being based solely on Palmer's hearsay testimony.[2] Substantial evidence is more than "a scintilla of evidence," "some evidence," or "any evidence." *Minn. Ctr. for Envtl. Advocacy*, 644 N.W.2d at 466 (quotation omitted). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" or "the evidence considered in its entirety." *Id.* (quotation omitted).

MEO's Safety-and-Security Concerns

Palmer, as a medical examiner's investigator, had a duty to secure MEO evidence and not intentionally compromise the safety of the MEO's personnel. *See Leininger*, 299 N.W.2d at 726 (requiring just cause to be cause that "specially relates to and affects the administration of the office" (quotation omitted)). The essential job functions of a medical examiner's investigator include "preserv[ing] [and] secur[ing] . . . bodies and evidence," "secur[ing] . . . decedent's property[-]related evidence and clothing[, and] maintaining [an] appropriate chain of custody." During his shift on October 2, Palmer was the only investigator present and, as such, was responsible to supervise the health-care trainee. The CME testified that medical examiner's investigators are "the lead representative[s] of [the] office at homicide scenes" and that he considers

[2] In this opinion, we refer to the two adult, male strangers as "two strangers."

> the investigators to be the eyes and ears for [the] office in the vast majority of our cases. . . . [W]hen a death gets reported to the office it's going to go to the phone of one of the investigators. He or she is going to take the initial history, whether it is from the police at the scene, the ambulance driver, the hospital emergency room, the funeral home, I mean just about anybody who reports a death to us.
>
> . . . .
>
> If we do need to be represented at the scene of death, then it would be in most cases two of my investigative staff going to that scene of death. They are going to have the initial contact with the police who were present at the scene, the initial contact with the family.
>
> [T]he body [would be] brought back to the office . . . by the investigator in a secured fashion. . . .
>
> [I]t's often the investigator who is responsible for inventorying the clothing, the property, the money, the jewelry, any other valuables or things of evidentiary nature that could be on the body.

As noted above, the ALJ described the MEO's safety concerns implicated by the two-strangers incident as "inflated" and referred to the MEO's view of the incident as a "what-could-have-happened view of the incident." The ALJ's rejection of the MEO's safety concerns is unsupported by substantial evidence in view of the entire record, which shows that Palmer's safety-and-security duties were substantial and affected the public's rights and interests. *See Leininger*, 299 N.W.2d at 726 (requiring just cause to be "restricted to something of a substantial nature directly affecting the rights and interests of the public" (quotations omitted)).

The CME testified before the ALJ that the MEO's "[n]umber 1 concern is for the safety of the people working in the building and the evidence inside of it." The CME

further testified that the "safety of" the MEO's employees "is first and foremost" and noted that the MEO has "safety concerns in the facility because sometimes disgruntled people have gotten into the [MEO] before." He testified that Palmer's conduct in connection with the two-strangers incident "lack[ed] . . . judgment" because "we have no idea who those individuals are, it's 2:00 in the morning, we have another employee who could have been at risk because of all of that." He also testified that "closely on the heels" of the office's safety concerns is the public's "expectation that the [MEO] is a secured facility in terms of data and evidence," and that "by definition if you brought strangers into the secure part of the building, the building has been compromised." The CME testified that the office "[t]ypically . . . will do between 700 and 800 autopsies per year."

The MEO office administrator testified that the office is "operating more and more like . . . a crime lab. . . . Everything is checked in, everything is checked out, everything has chain of custody." The office administrator also explained that "roughly we can have 1,600 bodies . . . through that facility every year" and that "roughly about 100 of them" are for homicides and other criminal cases. The office administrator considered Palmer's conduct regarding the two-strangers incident to be "an extremely, extremely egregious risk to safety of another employee"—the health-care trainee whom Palmer was supposed to be supervising during the incident.[3]

[3] The office administrator testified that health-care trainees are "just there to help move things around, help carry a body, assist the investigator on shift with what they may need" and "are not trained in any way, shape or form to provide any customer service . . . other than perhaps putting them on hold" or, with assistance, "letting . . . in" known persons into the back garage.

Palmer's supervisor testified that Palmer "completely compromised all of the investigations, all of the paperwork by having [the two strangers] there" in the secured portion of the medical examiner's building. She also testified that, even though no violence occurred during the two-strangers incident, Palmer "completely compromised the safety and security of . . . all of the people that come into our area," noting that "2:00 in the morning is not the time of day that you see probably the best representatives of society on the street." The health-care trainee testified that Palmer's conduct "shock[ed]" her because

> there were people that were brought in that—I mean it's a secure facility for reasons, especially in the middle of the night, and so I think that was the biggest of the two things. I mean other than bringing people into our facility that we had no idea who they were, the second would be that he then left and I had no idea that I was there alone.

The trainee also testified that she would be "very uncomfortable" if Palmer returned to work because "obviously given this whole situation, but also that I wouldn't—I don't think I would necessarily be able to trust his decision-making if we were at a scene together or at the office alone again."

As the CME explained, "[T]he public . . . [has] an expectation that the [MEO] is a secured facility in terms of data and evidence." In accord with the CME's explanation are the Minnesota Supreme Court's recent statements that medical examiners "perform an essential fact-finding role in our criminal justice system" and "a medical examiner's primary purpose is . . . to serve the public by determining how people die." *State v. Beecroft*, 813 N.W.2d 814, 834, 846 (Minn. 2012); *see also* Minn. Stat. § 390.11, subd. 2

(2012) (permitting medical examiner to "order an autopsy . . . when . . . the public interest would be served by an autopsy").

We conclude that the evidence as a whole can support only one finding, which is that, on October 2, Palmer violated his safety-and-security duties in a manner that demonstrates that he is not fit to continue working as a medical examiner's investigator. *See Leininger*, 299 N.W.2d at 726 (requiring just cause to be cause that "touch[es] the qualifications of the officer or his performance of its duties, showing that he is not a fit or proper person to hold the office" (quotation omitted)). Palmer's testimony about the October 2 incident shows that, even at the time of the March 2012 hearing, he did not appreciate the extent to which he compromised the MEO's safety and security. He testified that the two men he met outside the MEO facility on October 2 were strangers to him; that the street where he met the men "could potentially be a dangerous area" at "2:00 o'clock in the morning"; that he judged whether the two strangers were safe in a "five-minute period of time"; and that his testimony is the only testimony indicating the men were "from Holland, or anyplace else." But he disagreed that "allowing [the two strangers] into the building was an incredible lack of judgment." He testified that he would not do so again merely because "this has caused such a tremendous uproar that I handled it the way I did." And, during cross-examination, Palmer disagreed with and downplayed the possibility that the two strangers could have been dangerous, as follows:

> COUNTY ATTORNEY: But in reality, [the two strangers] could have been very dangerous; is that correct?
> PALMER: No. Why would I assume that they're—

> COUNTY ATTORNEY: I'm not asking whether you assumed or not. It's possible that they could have had a gun in their jeans or under their shirt? It's possible, isn't it?
> PALMER: I would—anything could be possible.
> COUNTY ATTORNEY: It's possible they could be carrying a knife?
> PALMER: Anything could be possible.

Moreover, only days after the two-strangers incident, the MEO learned that Palmer had previously invited an intoxicated stranger into the secure area of the facility while Palmer and a health-care trainee were on duty. And Palmer conceded that roughly two years earlier, he had invited a Canadian tourist into the MEO's investigator's office and then left the building and drove the individual to the individual's destination. Palmer acknowledged that the incident involved "very similar circumstances" to the two-strangers incident. Palmer never informed his supervisor about the intoxicated-stranger incident because he did not think that it was "significant to tell her." Similarly, Palmer did not tell his supervisor or the MEO office administrator about the two-strangers incident before his October 21 interview because "it wasn't an important issue." Palmer's testimony was consistent with his disagreement with his dismissive attitude toward the notion that permitting the two strangers into the MEO facility on October 2 was "an incredible lack of judgment."

We agree with the CME's testimony that Palmer's conduct shows that he lacked judgment; that his conduct was "an egregious violation of the trust the public gives [the MEO] to protect [MEO] evidence"; and that, when strangers are brought into the secure part of the MEO facility, the facility is "compromised." Substantial evidence in the record on the whole supports the MEO's concern about Palmer's potential

compromise of the MEO's safety and security and does not support a conclusion that the MEO's concern was unjustified. And the absence of negative consequences for the MEO resulting from Palmer's conduct on October 2 does not render the evidence that supports a just-cause determination any less substantial. *Cf. Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 775–76 (Minn. App. 2008) (concluding in unemployment-benefits case that employer's discharge of pilot-employee was justified because employee was drunk when employee was scheduled for "flight reserve status," even though employee did not fly while drunk, because "[t]he mere chance that a pilot could have been called on to fly a passenger airplane while intoxicated has a significant adverse impact on" the employer and, "[a]t the very least, there is a loss of trust between [the employee] and [the employer] that occurred as a result of this incident"), *review denied* (Minn. Oct. 1, 2008); *but cf. Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 806 (Minn. 2002) (clarifying that, in unemployment-benefits cases, "the issue is not whether the employer can choose to terminate the employment relationship, but rather whether, now that the employee has been terminated, there should be unemployment compensation" (quotation omitted)).

The ALJ concluded that Palmer's October 2 conduct with the two strangers "did not violate a clear MEO policy." That conclusion is unsupported by substantial evidence in view of the entire record. The MEO noticed its intent to discharge Palmer based on his violations of rules and policies including the office's "Unusual Circumstances" policy. That policy provides that "[u]nusual circumstances can always arise" and that "[i]f immediate action is necessary the lead investigator *and* supervisor should be notified as soon as possible" and "[i]f at all possible unusual circumstances should be reviewed and

an action plan decided upon rather than forcing oneself to react to an ill-thought out act." (Emphasis added.) The office administrator testified that the MEO is "presented with [unusual circumstances] on a daily basis" and that, "if an employee in any way is presented with something that is unusual . . . it should be very apparent in our business to these investigators who are well trained what is unusual, then they should really be contacting the on-call supervisor for direction or assistance." The office administrator further testified that Palmer was the lead investigator during the October 2 two-strangers incident and "Palmer didn't call the on-call supervisor."

The CME testified that Palmer's conduct warranted termination because Palmer's conduct

> is just so beyond the pa[le] compared to the other things that Mr. Palmer may have done in the past, that right there is extraordinarily concerning. The lack of judgment, the fact that we have no idea who those individuals are, it's 2:00 in the morning, we have another employee who could have been at risk because of all of that.
>
> Then tacking that to the previous disciplinary record where, again, the evidence isn't particularly compelling that Mr. Palmer has learned from past reprimands, anything less than termination . . . , I don't know why that would guarantee this wouldn't happen again.

We conclude that the ALJ's rejection of the MEO's safety-and-security concerns as a just-cause basis for discharging Palmer is unsupported by substantial evidence in view of the entire record.

Honesty and Trust

An employee's dishonesty to his or her employer, and the employer's consequent loss of trust in the employee, may constitute just cause. *See Thoreson v. Civil Serv. Comm'n of City of St. Paul*, 308 Minn. 357, 362–63, 242 N.W.2d 603, 606 (1976) (concluding that "the activities of appellant"—a "building inspector"—"constituted just cause for his discharge when considered with reference to the character of his office and the qualifications necessary to fill" the office because, among other reasons, "[t]he fact that appellant deliberately made misrepresentations . . . could reasonably indicate to the commission that he lacked the requisite degree of honesty and integrity to properly perform his duties"); *Deli v. Univ. of Minn.*, 511 N.W.2d 46, 49, 54 (Minn. App. 1994) (concluding that the "evidence establishe[d] just cause for [appellant]'s dismissal" because (1) "[t]he issue appear[ed] to be one not only of dishonesty, but also of insubordination"; (2) appellant's supervisor discharged appellant "based on her belief that she could no longer trust or work with [appellant]"; and (3) the supervisor "should be given some discretion in determining whether [appellant]'s conduct was serious enough to warrant dismissal" when the supervisor had worked with appellant for approximately four years), *review denied* (Minn. Mar. 23, 1994).

During the October 21 interview, Palmer denied talking to or meeting with anyone in an unofficial capacity during his shift on October 2, stating that he "did not talk to anyone" while taking a cigarette break and that "he ha[d] not had any visitors in the facility in the middle of the night ever." And Palmer answered "NO" and "[a]bsolutely no one else," when asked whether he recalled "bringing any non-[Hennepin County Medical

Examiner] visitors into the building at any time during [his] shift." Palmer stated several times that he was "not trying to be evasive," and that he "just [didn't] remember anything." But, as noted by the CME during his testimony, after the October 21 interview, Palmer recalled an "impressive amount of detail" when he appealed his dismissal to the CME and appeared at the November 1 administrative hearing. Particularly troubling is Palmer's statement at the October 21 interview that he "ha[d] not had any visitors in the middle of the night *ever*." (Emphasis added.)

The ALJ found that, at the time of the interview, Palmer had just completed a 12-hour shift and had been awake for 20 hours; Palmer "assumed he had done something incorrect in returning the body to the" Veteran's Administration Medical Center (VAMC); Palmer "asked [the office administrator] at least twice to explain what the issue was so that he could respond, but [the office administrator] did not explain"; and Palmer "never knew, from the questions he was asked, that the MEO was concerned about his assisting the Dutch farmers." But the ALJ failed to make any findings that reconcile Palmer's statements at the October 21 interview with his testimony regarding the October 2 two-strangers incident. And we are troubled by the ALJ's finding that the MEO "misled [Palmer] to believe that [the office] was investigating an entirely different event—returning a body to the VAMC—rather than the Dutch farmers incident. The interview method of secreting the real purpose of the interview from [Palmer] strikes the ALJ as misguided and a denial of a fair process."

The record clearly shows that, before the October 21 interview, Palmer signed a form with the following information:

> You are being questioned and/or providing a statement pursuant to an administrative investigation related to your employment. This interview is an opportunity for you to present any information you wish to be considered. This interview will be conducted under the following conditions:
>
> 1. You do not have to participate in this interview.
>
> 2. Your refusal to answer any questions will not be grounds for discipline.
>
> 3. If you do not participate in this interview, we will base any disciplinary decision on other information we have available.

The office administrator testified that he asked Palmer "open-ended questions" and "let [Palmer] share what he recalled with no leading questions."

Occupy-Minnesota Incident

On October 28, one of Palmer's coworkers informed Palmer's supervisor that on October 20, without informing the coworker that he was leaving the MEO facility, Palmer "had gone to the Occupy Minnesota protest to give Tootsie-Pops to the protestors" and that, "[a]pparently, the protestors then thanked the Hennepin County Medical Examiner's Office over the live news feed online that he was viewing once back at the office."

The office administrator testified that, without telling the health-care trainee with whom he was working, Palmer left the MEO facility to attend the Occupy-Minnesota protest "in the middle of the night" during "one of his shifts." Palmer drove "about four or five blocks away" to the event in "a medical examiner's rig" and indicated at the event that "these treats are on behalf of Hennepin County Medical Examiner." The office

administrator confirmed that Palmer engaged in the Occupy-Minnesota protest by viewing "this in the media, one form of the media outlined that this was happening, which is just so contrary to what we ever want to see happen." Aside from the "safety risk potential" implicated by Palmer's conduct, the office administrator explained that the MEO "work[s] very hard to keep . . . out of the news" and that the office does not "want the families of our decedents [to think] that [we consider] our job . . . so frivolous that we leave in the middle of the night."

As a medical examiner's investigator employed by Hennepin County, Palmer was subject to Hennepin County Human Resource Rules Section 16.3 and therefore had a duty to "not conduct himself . . . in any manner which shall reflect negatively on the County." *See Leininger*, 299 N.W.2d at 726 (requiring just cause to be cause that "specially relates to and affects the administration of the office" (quotation omitted)). Palmer's conduct with respect the Occupy-Minnesota incident substantially affected the public's rights and interests to an unbiased medical examiner's office. *See id.* (requiring just cause to be "restricted to something of a substantial nature directly affecting the rights and interests of the public" (quotations omitted)). Medical examiners "are intended to be . . . unbiased[] and independent public officials" and "an independent, autonomous, and neutral community of medical examiners is essential to the 'fair administration of justice' in our state." *Beecroft*, 813 N.W.2d at 846; *see also Gross v. N.Y. Times Co.*, 575 N.Y.S.2d 221, 225 (Sup. Ct. 1991) (noting that chief medical examiner "was vested with a responsibility to the public" and that intentionally issuing misleading or inaccurate reports would constitute an abuse of "a public trust"), *aff'd*, 587 N.Y.S.2d 293 (N.Y.

App. Div. 1992), *rev'd in part on other grounds*, 82 N.Y.2d 146 (1993); *In re Controller's Subpoena Concerning Prof'l Ed. Fund of Allegheny Cnty. Coroner's Office*, 434 A.2d 1323, 1326 (Pa. Commw. Ct. 1981) (noting that former coroner "allegedly violated the public trust with which he is charged"); *Thompson v. Texas State Bd. of Med. Examiners*, 570 S.W.2d 123, 130 (Tex. Civ. App. 1978) ("[T]he Board of Medical Examiners would betray their public trust to permit unlicensed persons to practice medicine."); *cf. Long Beach City Employees Ass'n v. City of Long Beach*, 719 P.2d 660, 669 (Cal. 1986) ("Public employees are trustees of the public interest and thus owe a special duty of integrity.").

We conclude that Palmer's undisputed conduct with respect to the Occupy-Minnesota incident supports the MEO's position that Palmer is not fit to fulfill the duties of a medical examiner's investigator. *See Leininger*, 299 N.W.2d at 726 (requiring just cause to be cause that "touch[es] the qualifications of the officer or his performance of its duties, showing that he is not a fit or proper person to hold the office" (quotation omitted)).

Extenuating Circumstances

Palmer argues that "if this Court reverses the ALJ's decision and finds just cause is present, Palmer satisfied his burden of establishing 'extenuating circumstances' warranting the imposition of a lesser adverse disciplinary action." Palmer suggests that his conduct warrants only a one-day suspension with pay because that would be consistent with the disciplinary "response to past incidents involving more serious or at least analogous breaches of workplace rules or policies."

Minnesota Statutes section 383B.38, subdivision 1a(e), provides that an ALJ "may reinstate the employee, with full, partial, or no pay, or may modify the department head's action by substituting a lesser disciplinary action" when "the employee has asserted and the hearing record establishes extenuating circumstances."

Although the parties briefed the extenuating-circumstances issue to the ALJ, the ALJ did not expressly address the issue in her decision. We nevertheless decline to remand for the ALJ to address the extenuating-circumstances issue because no reasonable likelihood exists that, on remand, the ALJ would make extenuating-circumstances findings different from the ALJ's findings regarding why the MEO did not have just cause to discharge Palmer. Palmer presented to the ALJ many of the same arguments to support both his argument that just cause did not support the discharge and to support his argument that extenuating circumstances warrant less severe discipline. Moreover, for all of Palmer's remaining extenuating-circumstances arguments, the ALJ applied those arguments to support the ALJ's conclusion that just cause did not warrant discharging Palmer. And even if the ALJ did, on remand, make extenuating-circumstances findings, the imposition of lesser discipline is not warranted by substantial evidence. *See Wagner v. Minneapolis Pub. Sch., Special Sch. Dist. No. 1*, 569 N.W.2d 529, 533 (Minn. 1997) (reversing civil-service commission's mitigation of an ALJ's discharge of an employee to a 90-day suspension when "[n]one of the extenuating circumstances that the commission relied on is supported by substantial evidence"); *Matter of Schrader*, 394 N.W.2d 796, 801 (Minn. 1986) (reversing hearing board's mitigation of an employer's discharge of an employee to a 60-day unpaid suspension and reinstating discharge when the board's

findings regarding extenuating circumstances were "not supported by substantial evidence").

Palmer makes the following extenuating-circumstances arguments:

(1) he was trying "to assist these lost farmers when he was legitimately concerned for their safety," and the Minneapolis Police Department refused assistance when he called to request assistance for the two strangers;

(2) "no bodies or Medical Examiner evidence were accessed by the Dutch farmers";

(3) the rules and policies regarding the two-strangers incident "are ambiguous";

(4) his coworkers allowed nonemployees in the secure area in the past without consequences;

(5) he has a 25-year tenure with Hennepin County, never previously received "counsel, discipline, warn[ing] or suspen[sion] . . . for any prior infraction of this rule or any similar rule," and his "response to previous efforts to coach and counsel him when he breached other rules . . . demonstrates a coachable employee who sought to meet the expectations of his position."

None of Palmer's arguments is persuasive. We address only those arguments that warrant comment.

Palmer fails to support his one-day-suspension-with-pay assertion with any legal or record citation, nor is any apparent. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519–20, 187 N.W.2d 133, 135 (1971) ("An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection."). As to the MEO's rules and policies, aside from violating the MEO's unusual-circumstances policy, Palmer violated basic common sense applicable to the circumstances. As aptly noted by the CME's testimony,

> It's . . . difficult to craft a policy that says you shouldn't bring random people off the street at 2:00 in the morning and let them into the secure part of the facility. I mean there is only so much you can put into policies and procedures when you are trying to usurp commonsense.

Palmer's conduct eroded the MEO's ability to trust Palmer's judgment in the capacity as a medical examiner's investigator. *Cf. Peterson*, 753 N.W.2d at 775–76 (noting that "[t]he mere chance that a pilot could have been called on to fly a passenger airplane while intoxicated has a significant adverse impact on" the employer and, "[a]t the very least, there is a loss of trust between [the employee] and [the employer] that occurred as a result of this incident").

As for other employees' past allowance of nonemployees in the secure areas of the MEO, the ALJ's finding that "[f]amily members of MEO employees came to the facility from time to time without prior approval" is supported by substantial evidence. But substantial evidence also reveals that such visits were made *only* by two employees' *family and friends* during the day. The record reflects no circumstances in which the MEO permitted an employee, without consequence, to invite *strangers* into the MEO's secured facility in the middle of the night.

As for Palmer's employment history with Hennepin County, as noted previously, Palmer only began his employment as a permanent medical examiner's investigator in May 2007. And the evidence does not support Palmer's contention that he has learned from past reprimands, which include:

(1) a written reprimand by the MEO in July 1995, informing Palmer that he was "in possession of a copy of a portion of the Medical Examiner's Investigator's promotional test"; that he offered a copy of the test to another individual

before she took the test; and that, consequently, Palmer "compromised the Medical Examiner's Investigator promotional testing procedure and will require a revamping of the entire testing process. Countless hours of effort went into developing a test which is now worthless and cannot be reused."

(2) a written reprimand in October 2008 for "[u]nacceptable customer service with hospital customer inappropriately refusing a body," regarding which, Palmer told his supervisor that he refused the body to "'teach them a lesson'";

(3) an oral reprimand in March 2009 for "[l]eaving a body bag with decomp juice at a death scene & for an immature response to the incident to the Director";

(4) performance coaching in November 2009 for "Inappropriate Use of Email (to County Administrator) Violation of Diversity/Respectful Workplace Policy";

(5) a written reprimand in January 2010 for "Inappropriate Use of Email (to HR Director) Violation of Diversity/Respectful Workplace Policy";

(6) performance coaching in March 2010 for violating a county medical examiner's body-processing rule regarding "[t]orn buttons off a decedent's shirt";

(7) a written reprimand in June 2010 for violating the same body-processing rule regarding "[i]nappropriate discarding of decedent clothing"; and

(8) in February 2008, March 2009, and February 2010, Palmer's supervisor reprimanded him by e-mail for repeatedly failing to secure medications at death scenes, noting in her first e-mail that she did not expect that the problem would continue; but it did.[4]

Based on our review of the entire record, we conclude that the ALJ's decision to reinstate Palmer and her conclusion that just cause did not warrant discharging Palmer is unsupported by "evidence that a reasonable mind might accept as adequate." *Minneapolis*

[4] The ALJ did not mention in her decision the matter referenced in item (1) and mentioned only briefly the February 2010 e-mail referenced in item (8). Moreover, the ALJ failed to mention that Palmer, in his May 2007 employment application for the position of a medical examiner's investigator, stated that he left his previous employment because the "position [was] terminated" when in fact his previous employer terminated him from the position.

Police Dep't, 425 N.W.2d at 239. Substantial record evidence supports a conclusion that the MEO had just cause to discharge Palmer based on his conduct with respect to the October 2 two-strangers incident and October 20 Occupy-Minnesota incident. As substantial evidence reveals, Palmer's deliberate conduct regarding both incidents put at risk the MEO's safety, security, and integrity, thereby constituting just cause to discharge Palmer.

We conclude that the ALJ's conclusion that Palmer's discharge is not supported by just cause is unsupported by substantial evidence in view of the entire record as submitted. We also conclude that the ALJ's error prejudiced the MEO's substantial rights because, had the ALJ rendered a just-cause determination supported by substantial evidence in view of the entire record as submitted, the ALJ would have been compelled to conclude that substantial evidence of just cause warranted Palmer's discharge. Because we reverse the ALJ's decision because it is unsupported by substantial evidence, we do not reach the MEO's arguments that the decision is arbitrary and capricious and against public policy.

Reversed.