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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1245**

Graham Joachim,
Relator,

vs.

Glen Schmit, Inc. - US Video,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 1, 2013
Affirmed
Connolly, Judge**

Department of Employment and Economic Development
File No. 29090904-3

Graham Joachim, Savage, Minnesota (pro se relator)

Glen Schmit, Inc.-US Video, Hopkins, Minnesota (respondent)

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

Considered and decided by Stauber, Presiding Judge; Connolly, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

In this certiorari appeal, pro se relator challenges the decision of an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits based on his discharge for employment misconduct, after his employer alleged that he was responsible for money missing from a deposit, he did not properly perform maintenance duties, and he smoked marijuana on the job. Because we defer to the ULJ's credibility determinations and because relator's actions amounted to employment misconduct, we affirm.

FACTS

Relator Graham Joachim was employed as a store manager of Award Video, a video rental and retail store, by respondent Glen Schmit Inc. from February 2011 until December 23, 2011. In the fall of 2011, Glen Schmit, the owner of Award Video who resides in California, visited the store. When he arrived at the store, he noticed that the store had not been vacuumed, empty boxes were sitting out, several of the fluorescent ceiling lights were out, the bathroom had not been cleaned, the store's paperwork was in disarray, the safes were broken, and there were over 1,000 DVDs sitting in the back of the store in boxes that had not been put out on the shelves. As manager, it was relator's responsibility to keep the store maintained.

Relator was also responsible for taking the store's cash deposits to Schmit's other video store in Hopkins on a daily basis. Relator was to hand the daily envelope with the money directly to an employee at the Hopkins store and go over the count with that

employee. But relator would often leave the envelope on the counter and the deposits were often off by five or ten dollars.

On December 20, 2011, relator brought his deposit to the Hopkins store, but did not go over the deposit with a Hopkins store employee. Instead, he placed it on a shelf in the store. The deposit was short approximately \$120. The Hopkins store employee on duty reported that relator smelled strongly of marijuana, appeared disoriented, and seemed to be under the influence of drugs. Award Video has a strict no-drug-use policy in its employee handbook. Schmit had been previously concerned about relator being under the influence of drugs on the job because relator often talked very slowly, did not perform job duties as asked, and did not remember Schmit instructing him to do so. On December 23, Schmit discharged relator for marijuana use and for mishandling deposit money.

Relator applied for unemployment benefits and established a benefit account with respondent, the Minnesota Department of Employment and Economic Development (DEED). A DEED clerk initially determined that relator was eligible for benefits because he had been discharged for reasons other than employment misconduct. Schmit appealed the determination, and the ULJ conducted a hearing. The ULJ held that relator was discharged for employment misconduct and was ineligible for benefits. Relator requested reconsideration, and the ULJ affirmed. This certiorari appeal follows.

D E C I S I O N

When reviewing the decision of a ULJ, we may affirm the decision, remand the case 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 “(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious.” Minn. Stat. § 268.105, subd. 7(d) (2012).

An employee who is discharged for employment misconduct is ineligible to receive 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). The misconduct definitions set out in the statute are exclusive and “no other definition applies.” *Id.*, subd. 6(e) (2010).

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” and defers to the ULJ’s credibility determinations. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

The ULJ concluded that relator violated the standards of behavior that Schmit had a right to reasonably expect because relator failed to perform his assigned duties and

smoked marijuana on the job. Relator denies every allegation and argues that Schmit is lying. Where, as here, the ULJ's misconduct determination rests on disputed evidence and credibility is central to the ULJ's decision, the ULJ is required to make credibility findings and "must set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1(c) (2012). "Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus*, 721 N.W.2d at 345.

The ULJ plainly set out her reasons for crediting and discrediting the testimony of the witnesses. She explained that Schmit's testimony was "more credible" than relator's because Schmit "provided detailed testimony that is consistent with his written submissions and is a more plausible version of events than [relator's] blanket denial." Because the ULJ set out her reasons for crediting the employer's testimony, we must defer to her credibility determinations and factual findings.

Next, we must determine whether, based on the ULJ's findings, relator's conduct constituted employment misconduct. Relator's mishandling of the store deposits, his failure to maintain the store, and his marijuana usage all amount to employment misconduct. Employers have "the right to expect scrupulous adherence to procedure by employees handling the employer's money." *McDonald v. PDQ*, 341 N.W.2d 892, 893 (Minn. App. 1984). By not following his employer's procedure for handling the deposits, relator demonstrated a substantial disregard for his employer's interests. Moreover, relator's failure to maintain the video store was intentional, negligent, or indifferent conduct that clearly displayed a substantial lack of concern for his employment. Finally, relator had been warned that drug use was strictly against company policy, yet showed up

to make a store deposit under the influence of marijuana. This intentional conduct displayed clearly a serious violation of the standards of behavior that his employer had the right to reasonably expect of relator as an employee.

Viewing the ULJ's factual findings in the light most favorable to the decision and deferring to the ULJ's credibility determination, the ULJ did not err in determining that relator was discharged for employment misconduct and that he is ineligible for unemployment benefits.

Affirmed.