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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2150**

Jerod Hatleli,
Relator,

vs.

Midwest Door Company of Austin, MN, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 15, 2013
Affirmed
Peterson, Judge**

Department of Employment and Economic Development
File No. 30096888-3

Jerod A. Hatleli, Austin, Minnesota (pro se relator)

Midwest Door Company of Austin, MN, Inc., Austin, Minnesota (respondent employer)

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

Considered and decided by Peterson, Presiding Judge; Chutich, Judge; and Smith,
Judge.

UNPUBLISHED OPINION

PETERSON, Judge

This certiorari appeal is from an unemployment-law judge's decision that relator is ineligible to receive unemployment benefits because he was discharged for aggravated employment misconduct. We affirm.

FACTS

Relator Jerod Hatleli worked as an installer at respondent Midwest Door Company of Austin, MN, Inc., which is owned by Jeff Pederson. On August 2, 2012, Midwest Door received a telephone call from Green Source, a general contractor, looking for a door for one of its customers. Green Source told Hatleli that the customer would pay Midwest Door \$1,145 to install the door and that Midwest Door should send Green Source a \$95 referral fee. Hatleli and Allen Belden, who was also an installer, went to Stacyville, Iowa, to install the door.

After completing the job, Hatleli instructed the homeowner to write the check to him, instead of to Midwest Door. When Hatleli and Belden returned to Austin, Hatleli cashed the check and gave \$100 to Belden. Hatleli told Belden, "[Pederson] will never know about the door being gone if we don't say anything." That evening, Belden told Gene Kline, Midwest Door's operations manager, that Hatleli told the homeowner to write the check to him, and gave Belden \$100 from the check proceeds. Belden gave Kline the \$100 he had received from Hatleli.

The next day, Kline asked Hatleli about the Stacyville job, and Hatleli told Kline that he and Belden did not install a door but only took measurements. After talking to

Kline, Hatleli asked Belden to help him move a door into the space previously occupied by the door that they had installed in Stacyville.

On August 5, after Pederson returned from vacation, Kline and Belden told him about Hatleli's conduct. On August 7, Pederson discussed the situation with a police officer, and on August 8, Pederson discharged Hatleli for having the customer write the check to him rather than to Midwest Door. During the police investigation, Hatleli gave police an envelope containing \$940 and told police that the money was from the Stacyville job and that he intended to give it to Pederson. Hatleli was charged with gross-misdemeanor theft.

Hatleli sought unemployment-compensation benefits from respondent Minnesota Department of Employment and Economic Development (DEED), and DEED initially determined that Hatleli was eligible for benefits. Midwest Door appealed, and a hearing was held before an unemployment-law judge (ULJ). Hatleli testified that he intended to give the money from the Stacyville job to Pederson. Pederson, Kline, and Belden also testified.

The ULJ found Hatleli's testimony not credible and found that a preponderance of the evidence indicated that Hatleli intended to deprive Midwest Door of its property. The ULJ found that Hatleli's conduct constituted a gross misdemeanor and had a significant adverse effect on the employment. The ULJ concluded that Hatleli was ineligible for unemployment-compensation benefits because he was discharged for aggravated employment misconduct. The ULJ affirmed on reconsideration.

This certiorari appeal followed.

DECISION

We may reverse or modify the ULJ's decision if the substantial rights of the relator were prejudiced because the findings, inferences, conclusion, or decision are affected by error of law, unsupported by substantial evidence, or arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d)(4)-(6) (2012).

"Aggravated employment misconduct" is "the commission of any act, on the job or off the job, that would amount to a gross misdemeanor or felony if the act substantially interfered with the employment or had a significant adverse effect on the employment." Minn. Stat. § 268.095, subd. 6a(a)(1) (2012). An employee discharged for aggravated employment misconduct is ineligible to receive unemployment benefits and subject to cancellation of the wage credits earned from that employment. *Id.*, subds. 4(2), 10(c) (2012).

"Whether an employee committed employment misconduct is a mixed question of fact and law." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). "Whether the employee committed a particular act is a question of fact." *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). "Factual findings are reviewed in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ, and will not be disturbed when the evidence substantially sustains them." *Lawrence v. Ratzlaff Motor Express Inc.*, 785 N.W.2d 819, 822 (Minn. App. 2010), *review denied* (Sept. 29, 2010); *see also Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006) (stating that this court defers to ULJ's ability to weigh conflicting evidence). 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). Whether a particular act constitutes disqualifying misconduct is a question of law, which we review de novo. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011).

The ULJ found that “a preponderance of the evidence indicates that Hatleli intended to deprive Midwest [Door] of its property” and concluded that, because Hatleli’s “actions constitute a gross misdemeanor and had a significant adverse effect on the employment, Hatleli was discharged for aggravated employment misconduct.”

Hatleli argues that the evidence is insufficient to support the ULJ’s finding that he intended to keep the money from the Stacyville job and to permanently deprive Midwest Door of the money from the Stacyville job. But, viewing the ULJ’s finding in the light most favorable to the decision, and giving deference to the ULJ’s credibility determinations and ability to weigh the evidence, substantial evidence supports the ULJ’s finding. Pederson’s, Kline’s, and Belden’s testimony establish that Hatleli told the Stacyville homeowner to write the check to Hatleli; Hatleli cashed the check, gave Belden \$100, and told Belden that Pederson would “never know about the door being gone”; Hatleli told Kline that he and Belden only measured for a door, they did not install one; Hatleli asked Belden to move a door into the space occupied by the door that they had installed; Hatleli was not required to immediately pay Green Source a

commission, as he claimed; and Hatleli worked for three days after the Stacyville job but never gave the money to anyone at Midwest Door.

Hatleli contends that his testimony was credible and Pederson's, Kline's, and Belden's testimony was not credible. But the ULJ found that "a preponderance of the evidence does not support [Hatleli's] testimony. Too many inconsistencies make it highly unlikely that Hatleli planned to give the money to his employer." The ULJ specifically discredited two of Hatleli's explanations for his conduct: (1) that he told the customer to write the check to him because Green Source wanted to be paid immediately and (2) that he gave Belden \$100 for work that Belden did on his car. "Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus*, 721 N.W.2d at 345.

Hatleli argues on appeal that he had not given the money to Midwest Door because August 8 was Pederson's first day back at work after vacation, and Pederson is the only person that he gives cash. But, as the ULJ found, if Hatleli had planned to give the money to Midwest Door, "there was no reason for him to lie to Kline and say he just took measurements in Stacyville." We defer to the ULJ's credibility determination. *Id.* at 344.

Hatleli also challenges the ULJ's finding that, after the Stacyville job, Belden contacted Pederson and gave Pederson the \$100 that Hatleli had given to him. We agree that this finding is not supported by the record; the record establishes that it was Kline whom Belden contacted, told about Hatleli's conduct, and gave the \$100. Nevertheless,

substantial evidence supports the ULJ's finding that Hatleli intended to keep the money from the Stacyville job.

Hatleli also asserts that the ULJ erroneously found that he and Belden moved a door to "hide" the missing door. But the ULJ found only that Hatleli "asked Belden to help him move another door into the space previously occupied by the one they installed in Stacyville." This finding is supported by substantial evidence.

Hatleli argues that Midwest Door's appeal from DEED's initial determination of eligibility was untimely because DEED received Midwest Door's appeal on September 14, 2012. But the record indicates that DEED received Midwest Door's appeal on September 12. DEED issued a determination of eligibility on August 24, which stated that the decision would become final unless an appeal was filed by September 13. *See* Minn. Stat. § 268.101, subd. 2(f) (2010) (requiring that appeal from determination of eligibility be filed within 20 calendar days after sending of determination). Because DEED received Midwest Door's appeal on September 12, the appeal was timely.

Affirmed.