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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0353**

Reed A. Erickson,
Relator,

vs.

Department of Employment and Economic Development,
Respondent.

**Filed December 16, 2013
Affirmed
Worke, Judge**

Department of Employment and Economic Development
File No. 29838279-7

Reed A. Erickson, Side Lake, Minnesota (pro se relator)

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

Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Relator challenges an unemployment-law judge (ULJ) decision that he is ineligible
to receive unemployment benefits because he was discharged for employment
misconduct. We affirm.

FACTS

On June 1, 2012, relator Reed A. Erickson was discharged from his seven-year position as a state program administrative director overseeing the Minnesota small cities development program (SCDP), which is a part of respondent Minnesota Department of Employment and Economic Development (DEED). Erickson's discharge was preceded by his placement on administrative leave in the fall of 2011 while DEED investigated his expense-report discrepancies and work performance. Erickson was discharged because he had repeated incidents of inappropriate recording of time records, travel, and expenses, and he "fail[ed] to follow administrative rules and laws in the administering of [c]ommunity [d]evelopment [b]lock [g]rants." Erickson was initially determined ineligible to receive unemployment benefits, and he appealed.

Following an evidentiary hearing, the ULJ found that Erickson "did not make any expense reimbursement requests for expenses that were not incurred or expended for non-business purposes." The ULJ also found that SCDP had discretion to not follow funding-allocation percentages provided for by rule, and that Erickson's "funding recommendations [were] reviewed and approved by the commissioner." The ULJ's findings also reflected the reasonableness of Erickson's consideration of the communities' capacities to perform projects in recommending project funding, and actions regarding environmental compliance with federal law. The ULJ concluded that Erickson's conduct may have been unsatisfactory, but it did not constitute misconduct.

DEED sought reconsideration and submitted a lengthy investigative report¹ that fully addressed the reasons for Erickson's discharge. A law firm had been retained to investigate whether Erickson (1) had travel, expense, and timekeeping irregularities, and (2) whether Erickson properly performed his program-management duties.

At the second evidentiary ruling, Erickson was asked detailed questions about his claimed expenses and reported work time, his improper personal use of a rental vehicle, and his golfing while attending a work conference and charging the golf fees on a work credit card. The ULJ discovered numerous discrepancies that Erickson was unable to explain other than to label as errors. The ULJ ruled that Erickson was discharged, in part, for using an employer credit card for non-business expenses "and seeking reimbursement for expenses that were either not incurred or incurred for non-business purposes." In deciding that Erickson was discharged for employment misconduct, the ULJ found the DEED witnesses and investigative report to be more credible evidence than Erickson's testimony, stating:

[M]uch of [Erickson's] testimony seemed self-serving and implausible, and the report was very detailed and identified significant discrepancies and inaccuracies in the information Erickson provided during the investigation and his expense reports. It is more likely that he was incurring expenses for his own personal use and charging those expenses to an agency credit card or obtaining reimbursement for those expenses from DEED. Erickson's claim that he believed the

¹ Although this report was not offered into evidence at the first evidentiary hearing, the ULJ was required to order an additional evidentiary hearing upon ruling that the new evidence "would show that the evidence that was submitted at the [first] evidentiary hearing was likely false and that the likely false evidence had an effect on the outcome of the decision." Minn. Stat. § 268.105, subd. 2(c) (2012). The ULJ made such a determination.

golf expense was appropriate was not credible because it is not plausible that a management-level employee would assume it was permissible to charge the state for leisure expenses that were unrelated to the conference he was attending. The investigative report also noted that Erickson likely made notes about the specific cost for the golf, which suggested that he knew this was an added expense beyond the room he had booked.

DECISION

We review a ULJ's decision to determine whether it is "unsupported by substantial evidence in view of the entire record as submitted; or . . . 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) (2012). Employment misconduct is "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). An employee who knowingly violates an employer's reasonable policy commits misconduct for purposes of the unemployment statute. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 806 (Minn. 2002) (stating that even a single misconduct incident may make an employee ineligible to receive benefits "when an employee deliberately chooses a course of conduct that is adverse to the employer"). Whether an employee committed a particular act is a question of fact, which this court reviews for substantial evidence, deferring to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

But whether that act constitutes employment misconduct is a question of law subject to de novo review. *Id.*

The ULJ concluded that Erickson's conduct involved "inappropriate expenditures and requests for reimbursement." The investigative report summarizes the law firm's findings on the irregularities in Erickson's reporting:

Our review encompassed 11 events, including attendance at conferences, use of rental cars, and expense report inconsistencies. Significant findings include:

[1] Erickson falsified expense reports to show that he was working when in fact he was not.

[2] Erickson falsified expense reports and claimed expenses that were not legitimately due him.

[3] Erickson rented cars for State business and used them for personal use.

[4] Erickson caused the State to pay green fees at golf courses while he was attending conferences on State business.

[5] Erickson obtained reimbursement for per diem meal expenses that were included in lodging packages purchased at State expense.

The report contains a thorough analysis pertaining to these issues, citing the pertinent code of ethics for executive-branch employees and DEED's travel-expense policy. The report also documents discrepancies for each event, Erickson's responses to the discrepancies, and findings related to the discrepancies.

Erickson's pattern of conduct over an extended period provides substantial evidence to support the ULJ's decision. See *Drellack v. Inter-County Comnty. Council, Inc.*, 366 N.W.2d 671, 674 (Minn. App. 1985) (stating that employee's behavior "may be considered as a whole in determining the propriety of [his] discharge and [his] [eligibility] for unemployment compensation benefits"). A "pattern of failing to follow

policies and procedures and ignoring directions and requests” of an employer has been held to constitute misconduct making an employee ineligible for benefits. *Gilkeson v. Indus. Parts & Serv., Inc.*, 383 N.W.2d 448, 452 (Minn. App. 1986); *see Schmidgall*, 644 N.W.2d at 807 (ruling that employee’s “pattern of failing to comply with [an] injury reporting policy” constituted misconduct); *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305, 307 (Minn. App. 1994) (“Dishonesty that is connected with employment may constitute misconduct.”); *McKee v. Cub Foods, Inc.*, 380 N.W.2d 233, 234, 236 (Minn. App. 1986) (ruling that violating time card policy constituted misconduct); *Campbell v. Minneapolis Star & Tribune Co.*, 345 N.W.2d 803, 805 (Minn. App. 1984) (ruling that repeated violations of work rules constituted misconduct). Erickson’s conduct was egregious; conduct far less egregious than Erickson’s has been held sufficient to constitute misconduct for unemployment compensation eligibility purposes. *See, e.g., Skarhus*, 721 N.W.2d at 344 (ruling that food worker’s theft of a few dollars’ worth of food constituted employment misconduct).

To the extent that Erickson challenges the findings of the ULJ, those findings were based on credibility determinations, and the ULJ provided reasons for not crediting Erickson’s testimony. *See* Minn. Stat. § 268.105, subd. 1(c) (2012) (requiring ULJ to “set out the reason for crediting or discrediting” a witness’s testimony that “has a significant effect on the outcome of a decision”). We defer to the ULJ’s credibility determinations. *Skarhus*, 721 N.W.2d at 344. Further, although Erickson appears to offer some new evidence as attachments to his appellate brief, the new evidence is outside of the record, and Erickson did not offer a reason for post-hearing admittance of

the evidence. *See* Minn. Stat. § 268.105, subd. 1(c) (2012) (stating that ULJ decision must be made “upon the evidence obtained”); subd. 2(c) (stating statutory bases for granting request for reconsideration); Minn. R. Civ. App. P. 110.01 (stating that record on appeal is papers filed before the decision-maker below); Minn. R. Civ. App. P. 115.04 (stating that rule 110 applies to certiorari appeals).

Affirmed.