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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1979**

Julie Schwantes,
Relator,

vs.

Northwest Packaging, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed September 11, 2017
Affirmed
Peterson, Judge**

Department of Employment and Economic Development
File No. 34627509-3

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Considered and decided by Smith, Tracy M., Presiding Judge; Peterson, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this unemployment-compensation appeal, relator challenges a decision by an unemployment-law judge (ULJ) that relator is ineligible for unemployment benefits because she was discharged for employment misconduct. Relator argues that the ULJ erred by (1) concluding that relator's conduct displayed a serious lack of concern for her employment; (2) finding that relator's conduct was not the consequence of mental illness or impairment, or inability or incapacity; and (3) failing to adequately set forth reasons for discrediting the employee's testimony and crediting the employer's testimony. We affirm.

FACTS

Relator Julie Schwantes worked for respondent Northwest Packaging, Inc., as an accounting clerk from October 29, 1997, through April 25, 2016. Her scheduled hours were from 8:00 a.m. until 4:30 p.m., Monday through Friday. Controller Karen Gerr was Schwantes's supervisor. Because Gerr and Schwantes were the only two employees in the department, they coordinated their time off so that their jobs were always covered.

Because Northwest Packaging has few employees, the employees need to schedule nonemergency appointments in advance to ensure that all positions are covered. For nonemergency appointments, Northwest Packaging prefers two weeks' advance notice and requires a minimum of three days' notice. For emergencies, employees should report the absence by 7:30 a.m. if possible. It is unacceptable for an employee to report an absence due to a previously scheduled appointment on the morning of the appointment.

If Schwantes needed to leave work early, she was expected to notify Gerr before leaving. If Gerr was unavailable, Schwantes was expected to notify Northwest Packaging President Steven Durand. Schwantes was aware of this policy.

Schwantes suffered from migraine headaches, neck pain, depression, and anxiety. Schwantes was often absent or late due to these medical conditions. Gerr repeatedly asked Schwantes to provide lists of upcoming medical appointments, but Schwantes frequently did not provide notice of an appointment until the afternoon before or the day of an appointment.

On October 21, 2015, Durand texted Schwantes a warning stating that the company needed to plan for her absences, that one day's notice outside of an emergency did not allow for that, that further late notices would not be permitted, and that Schwantes would be subject to discipline if she continued to provide inadequate notice. On February 3 and March 29, 2016, Schwantes received second and third warnings for providing inadequate notices of appointments. The March 29 warning stated that it was a final warning and that "[f]ailure to give at least a 2 week notice for planned appointments in the future will be subject to disciplinary action, including termination."

On March 29, Schwantes made an appointment with her doctor for the following day but did not provide notice to Northwest Packaging until the next morning. On March 30, Gerr texted Schwantes a warning that stated: "You must notify us in advance of scheduled appointments and otherwise show up to work on time just as is expected of other employees. Failure to do so will lead to further discipline, including termination of employment." On April 18, Schwantes went to work and stated that she had a medical

appointment at 9:00 a.m. that morning. When Gerr asked when the appointment was scheduled, Schwantes said that it had been scheduled the previous week.

On the morning of Friday, April 22, 2016, Schwantes made a medical appointment for 2:30 p.m. that afternoon. Although Gerr was not in the office that day, Durand was in, and Schwantes did not notify him of the appointment. Instead, she told a coworker that she was leaving for a medical appointment. Schwantes did not return to work after the appointment. That afternoon, Durand texted Schwantes, asking why she had left when it was not prearranged. Schwantes did not respond until Sunday night. On Monday morning, Schwantes texted that she would be in at noon. That day, Northwest Packaging discharged Schwantes for not providing proper notice of medical appointments and other absences.

Schwantes applied for unemployment benefits, and respondent Minnesota Department of Employment and Economic Development (DEED) determined that she was ineligible for benefits. Schwantes appealed, and, following a telephone hearing, the ULJ determined that Schwantes was discharged from employment for misconduct and confirmed the ineligibility determination. On Schwantes's request for reconsideration, the ULJ issued an order of affirmation. This certiorari appeal followed.

D E C I S I O N

I.

We may affirm, remand, reverse, or modify a ULJ's decision if, among other things, the decision is unsupported by substantial record evidence, "made upon unlawful procedure," or contrary to law. Minn. Stat. § 268.105, subd. 7(d)(3)-(5) (2016).

An applicant who was discharged from employment for misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2016). “Employment misconduct” is defined as “any intentional, negligent, or indifferent conduct on the job . . . that displays clearly . . . a serious violation of the standards of behavior the employer has a reasonable right to expect of the employee; or . . . a substantial lack of concern for the employment.” *Id.*, subd. 6(a)(1), (2) (2016).

A ULJ’s misconduct determination is a mixed question of fact and law. *Wilson v. Mortgage Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016). We review the ULJ’s factual findings about an employee’s conduct in the light most favorable to the decision. *Id.* “Whether a particular act constitutes disqualifying conduct is a question of law,” subject to de novo review. *Id.*

An employer is permitted to establish reasonable rules governing absence from work. *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 28 (Minn. App. 2007). An employee who disregards an employer’s tardiness or absence policies violates the standards of behavior an employer can reasonably expect from an employee, and, therefore, commits employment misconduct. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 317 (Minn. 2011). Failure to follow such reasonable rules is employment misconduct that disqualifies an applicant from receiving unemployment benefits. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

The ULJ made specific findings about the numerous times that Schwantes failed to comply with the notice requirements for nonemergency appointments. Schwantes received warnings that she must comply with notice requirements on October 21, 2015, February 3,

2016, and March 29 and 30, 2016. On April 18, 2016, Schwantes provided notice of an appointment that morning that had been scheduled the previous week. On the morning of Friday, April 22, 2016, Schwantes scheduled a medical appointment for that afternoon. She did not report the appointment to management, she did not return to work after the appointment, and she did not respond to Durand's inquiry about the appointment until Sunday night.

Schwantes argues that, in part, she was discharged "because of her 'conduct' which was her inability or incapacity to attend work consistently." But the ULJ found that Schwantes was discharged for her "failure to follow known protocol for reporting schedule deviation" and her failure to return to work on April 22 or respond to Durand's text until Sunday night.

Schwantes argues that "[w]hat 'proper' notice was under the circumstances in this case was defined by what the employer said it was: 'adequate notice of scheduled appointments.'" There was testimony that Northwest Packaging's policy was that 14 days' notice for nonemergency appointments was preferred and three days' notice was the minimum and that Schwantes was aware of that policy. To the extent the policy was modified for Schwantes, the modifications were stated in the warnings.

Substantial evidence supports the ULJ's findings that Schwantes knew the employer's notice requirements for nonemergency appointments and received repeated warnings after violations. On April 22, less than four weeks after receiving a warning that future violations could result in termination, Schwantes again violated the notice requirements. Schwantes argues that the ULJ assigned too much significance to her failure

to return to work on April 22 when there was only about a half hour left in the workday and to her failure to respond to Durand’s text until Sunday night. Although this particular conduct might not have been a sufficient basis by itself to show misconduct, it must be viewed in the context of her repeated violations of the notice requirements. The ULJ’s misconduct determination is not contrary to law.

II.

The misconduct definition excludes “conduct that was a consequence of the applicant’s mental illness or impairment” and “conduct that was a consequence of the applicant’s inability or incapacity.” Minn. Stat. § 268.095, subd. 6(b)(1), (5) (2016).

The ULJ found:

Schwantes provided notice that she suffers from physical and mental illnesses, but that does not equate to providing notice that she would be absent as a consequence of those illnesses. Schwantes did not provide proper notice of her absence on April 22, 2016, despite multiple discussion[s] with Gerr, and an evolving notice paradigm, to ensure Schwantes gave proper notice. Schwantes testified that she did not provide proper notice because communicating with Gerr and Durand aggravated her depression and anxiety disorders. Because of the extensive communications between Schwantes, Gerr, and Durand in the record, the [ULJ] did not find this credible.

Substantial record evidence supports the ULJ’s finding that Schwantes’s failure to provide adequate notice was not caused by physical or mental illness.

III.

Minn. Stat. § 268.105, subd. 1a(a) (2016), states, “When the credibility of a witness testifying in a hearing has a significant effect on the outcome of a decision, the [ULJ] must set out the reason for crediting or discrediting that testimony.”

Schwantes argues that the ULJ did not adequately set out the reasons for discrediting Schwantes's testimony that her inability to communicate adequately was due to mental illness or impairment. The ULJ stated:

When the evidence of extensive text communications, emails, and testimony regarding conversations [is] considered, in which Schwantes repeatedly communicated to Gerr and Durand her appointment needs in advance of their scheduled dates, the preponderance of the evidence does not support a finding that Schwantes failed to communicate, by text, due to a consequence of her anxiety and depression on April 22, 2016.

The ULJ also stated, "Schwantes' failure to communicate punctually with Durand and Gerr was not a consequence of her depression or anxiety disorders."

Schwantes's argument that the ULJ should have addressed her mental and physical health issues is not persuasive. The fact that Schwantes was able to communicate effectively in so many situations was a sufficient basis for rejecting her claim that she was not able to do so in others.

Schwantes argues that the ULJ erred in failing to state the reasons for crediting the employer's evidence that the sole reason for her discharge was her failure to provide adequate notice of scheduled appointments. This finding reflects the ULJ's overall assessment of the evidence, not an assessment of witness credibility that had a significant effect on the ULJ's decision.

Affirmed.