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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2016**

Kristi Jolly,
Relator,

vs.

Handyhelp LLC - Healing Home,
Respondent,

Department of Employment and
Economic Development,
Respondent.

**Filed August 14, 2017
Affirmed
Johnson, Judge**

Department of Employment and
Economic Development
File No. 34753718-5

Kristi Jolly, St. Paul, Minnesota (*pro se* relator)

Handyhelp LLC, St. Paul, Minnesota (respondent employer)

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

Considered and decided by Reilly, Presiding Judge; Johnson, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

An unemployment-law judge determined that Kristi Jolly is ineligible for unemployment benefits because she was discharged from her employment for misconduct. We affirm.

FACTS

HandyHelp LLC provides services to individuals with mental disabilities, including adult foster care, independent housing, and targeted case management (TCM). Jolly, a registered nurse, worked for HandyHelp as a full-time nurse and case manager from March 23, 2016, to June 17, 2016. When she was hired, HandyHelp provided her with a copy of her job description. Her duties included, among other things, maintaining a caseload of approximately 20 clients in HandyHelp's relatively new TCM program, administering injections to clients, and providing nursing supervision and oversight at HandyHelp's adult foster-care facilities. Jolly acted as a team leader for the TCM program because she had relevant previous experience.

HandyHelp terminated Jolly's employment on June 17, 2016, for 12 reasons, which it summarized as a "combination of performance related reasons" and "concerns that [she] lacked interest in continuing to work with our clients and for our company." Jolly applied for unemployment benefits. In July 2016, the department of employment and economic development (DEED) made an initial determination that she is ineligible for unemployment benefits because she was discharged for employment misconduct.

Jolly pursued an administrative appeal of DEED's determination. In August 2016, an unemployment-law judge (ULJ) held an evidentiary hearing. HandyHelp presented the testimony of Blythe Nelson, HandyHelp's human-resources coordinator. Nelson testified that, when Jolly was hired, a human-resources assistant informed Jolly that she needed to complete 30 hours of training during the first 60 days of employment and that HandyHelp would honor her previous training only if it had been completed in the prior year. HandyHelp reviewed documents that Jolly provided concerning her prior training and informed her that her prior training did not satisfy the company's requirements because it had not been completed in the prior year. The human-resources assistant and Jolly's supervisor informed her via text message and in a face-to-face meeting that she needed to complete additional training, but Jolly did not satisfy the 30-hour requirement.

Nelson also testified that Jolly's duties included following up on medication errors and reviewing client-care plans at HandyHelp's adult foster-care centers. HandyHelp's executive director asked Jolly to set a schedule for her visits to the foster-care centers. Jolly did not do so. One adult foster-care center reported that Jolly had not visited since her fifth day on the job. Jolly's failure to make regular visits resulted in one adult foster-care client being referred to a hospital because Jolly was not present to give him an injection.

Nelson testified further that, throughout her employment, Jolly made numerous complaints about her co-workers, her caseload, and the company's administrative practices. Jolly expressed these complaints in an "unprofessional" manner. Jolly told Nelson that certain staff members were "incompetent" and that Jolly's supervisor was "stupid as sh-t." Jolly's team members complained to Jolly's supervisor about her negative

attitude. Jolly's supervisor met with Jolly to discuss her negative attitude in May 2016 and early June 2016. Even after those meetings, Nelson heard Jolly describe the company as "messed up" and her colleagues as "incompetent." Jolly was aware before her termination that her job was in jeopardy due to her negative attitude and unprofessional comments.

Jolly testified on her own behalf and disputed HandyHelp's evidence in numerous ways. She testified that she had not been informed that she needed to complete 30 hours of training within her first 60 days of employment. She believed that she satisfied HandyHelp's training requirements because she had completed state-mandated training. She testified that she did not fail to oversee the adult foster-care centers. She agreed that she had not visited one of the adult foster-care centers since the first week of her employment, but she insisted that she frequently communicated with both foster-care centers via e-mail, telephone, and text messages and that she was on-call "on a 24-7 basis." She testified that, in her view, HandyHelp's billing practices in the TCM program were illegal. She testified that she made negative comments to co-workers only once and that no one had spoken to her about a negative attitude.

In September 2016, the ULJ found that Jolly intentionally engaged in employment misconduct in three ways: (1) by "making disrespectful, unprofessional comments about the company and its procedures," (2) by refusing to complete the required training, and (3) by failing to visit HandyHelp's adult foster-care centers on a regular basis. Thus, the ULJ determined that Jolly is ineligible for unemployment benefits. Jolly requested reconsideration. In November 2016, the ULJ affirmed her earlier decision. Jolly appeals.

DECISION

Jolly argues that the ULJ erred by finding that she engaged in employment misconduct and by determining that she is ineligible for unemployment benefits.

This court reviews a ULJ's decision denying unemployment benefits to determine whether the findings, inferences, conclusions, or decision are unlawful or in excess of the ULJ's authority, unsupported by substantial evidence, or arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d) (2016). We review the ULJ's findings of fact "in the light most favorable to the decision" to determine whether "there is evidence in the record that reasonably tends to sustain them." *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted). We apply a *de novo* standard of review to the question whether an employee's conduct "disqualifies the employee from unemployment benefits," which "is a mixed question of fact and law." *Id.* (quotation omitted). "Whether the employee committed a particular act is a question of fact." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Unemployment benefits are intended to provide financial assistance to workers who have been discharged from employment "through no fault of their own." *Stagg*, 796 N.W.2d at 315 (quotation omitted). Accordingly, a worker who was discharged due to "employment misconduct" is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4 (2016); *Stagg*, 796 N.W.2d at 315-16. "Employment misconduct" is defined as

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.

Minn. Stat. § 268.095, subd. 6(a) (2016). This statutory definition is exclusive such that “no other definition applies.” *Id.*, subd. 6(e); *see also Wilson v. Mortgage Resource Ctr., Inc.*, 888 N.W.2d 452, 456-60 (Minn. 2016).

In this case, the ULJ found that Jolly intentionally committed serious violations of the standards of behavior that HandyHelp reasonably expects of its employees. Jolly contends that the ULJ erred because, for six reasons, substantial evidence does not support a finding that she engaged in misconduct.

First, Jolly contends that the agency record does not contain substantial evidence that she was negative and unprofessional. The ULJ’s finding that she made “disrespectful, unprofessional comments about the company and its procedures” is supported by Nelson’s testimony that she heard Jolly say that her supervisor was “stupid as sh-t” as well as Nelson’s testimony that Jolly frequently commented to other human-resources personnel and to other colleagues that the company was “messed up” and that its staff was “incompetent.” Nelson also testified that Jolly’s colleagues did not appreciate her negative attitude and that Jolly did not change even after her supervisor asked her to refrain from making disrespectful comments. The ULJ credited Nelson’s testimony, and this court will not disturb a ULJ’s credibility determination on appeal. *See Bangston v. Allina Med. Grp.*, 766 N.W.2d 328, 332 (Minn. App. 2009).

Second, Jolly contends that the agency record does not contain substantial evidence that she failed to complete HandyHelp's training requirements. The ULJ's finding is supported by Nelson's testimony that HandyHelp informed Jolly of its requirements, that HandyHelp informed her that her prior training would not completely satisfy the requirements, and that Jolly failed to complete 30 hours of training within her first 60 days of employment. Again, the ULJ credited Nelson's testimony, and this court will not disturb a ULJ's credibility determination on appeal. *See id.*

Third, Jolly contends that the agency record does not contain substantial evidence that she failed to oversee the adult foster-care centers. The ULJ's finding is supported by Jolly's job description, which was received into evidence as an exhibit and establishes that Jolly was responsible for "[p]roviding nursing supervision and oversight to two Adult Foster Cares." In addition, Nelson testified that Jolly received a copy of the job description when she was hired and that HandyHelp's executive director asked Jolly to set a schedule for her visits to the foster-care centers but that Jolly did not visit the foster-care centers on a regular basis. Again, the ULJ credited Nelson's testimony, and this court will not disturb a ULJ's credibility determination on appeal. *See id.*

Fourth, Jolly contends that the ULJ erred by not finding that she was terminated for whistleblowing instead of employment misconduct. The ULJ considered Jolly's theory but found it to be implausible. The ULJ's finding that Jolly was not terminated for whistleblowing is supported by all the evidence that tends to prove that she was terminated for misconduct. In addition, Nelson testified that HandyHelp started its TCM program on January 1, 2016, shortly before Jolly was hired, and that Jolly was aware that HandyHelp's

executive director was “working closely with the county” to ensure that the TCM program complied with applicable law. This court reviews the ULJ’s findings of fact “in the light most favorable to the decision,” *Stagg*, 796 N.W.2d at 315, and defers to the ULJ’s credibility determinations, *Bangston*, 766 N.W.2d at 332. The record does not compel a finding that HandyHelp discharged Jolly because of whistleblowing rather than for the reasons stated by the company.

Fifth, Jolly contends that the agency record does not contain substantial evidence that her employment misconduct was intentional. Contrary to the premise of Jolly’s contention, a finding of intentional misconduct is not required. The unemployment statute defines employment misconduct as “any intentional, *negligent, or indifferent conduct*, on the job or off the job that displays clearly . . . a serious violation” of the employer’s standards of behavior. Minn. Stat. § 268.095, subd. 6(a)(1) (emphasis added). Jolly cites *Houston v. International Data Transfer Corp.*, 645 N.W.2d 144 (Minn. 2002), for the proposition that an applicant is ineligible for unemployment benefits only if misconduct was intentional. But the *Houston* opinion was abrogated by a subsequent amendment to the statutory definition of misconduct. See 2003 Minn. Laws. 1st Spec. Sess. ch. 3, art. 2 § 13, at 1473-74. The statutory definition of misconduct is exclusive. Minn. Stat. § 268.095, subd. 6(e). Thus, Jolly’s contention is incorrect as a matter of law.

Sixth and finally, Jolly contends that the ULJ erred by finding that she engaged in misconduct because HandyHelp did not give her a formal reprimand before terminating her employment. The unemployment statute does not preclude a finding of misconduct merely because an employer did not give an employee a formal reprimand before

terminating the employee. *See Brown v. National Am. Univ.*, 686 N.W.2d 329, 333 (Minn. App. 2004) (affirming ineligibility of relator who was orally informed of unwritten company policy that she was found to have violated), *review denied* (Minn. Nov. 16, 2004). Thus, this contention also fails as a matter of law.

In sum, substantial evidence in the agency record supports the ULJ's finding that Jolly engaged in employment misconduct. Therefore, the ULJ did not err by determining that Jolly is ineligible for unemployment benefits.

Affirmed.