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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1196**

Clayton Teslow,
Relator,

vs.

Mag Mechanical, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 14, 2018
Affirmed
Halbrooks, Judge**

Department of Employment and Economic Development
File No. 35533284-3

Clayton Teslow, Circle Pines, Minnesota (pro se relator)

Mag Mechanical, LLC, New Hope, Minnesota (respondent employer)

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

Considered and decided by Connolly, Presiding Judge; Halbrooks, Judge; and
Reilly, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

In this certiorari appeal, relator challenges an unemployment-law judge's (ULJ) decision that he is ineligible for unemployment benefits because he was discharged for misconduct, arguing that the evidence does not support the ULJ's factual findings that he stole tools and mail from his employer and failed to report an absence. We affirm.

FACTS

In 2014, pro se relator Clayton Teslow started working as a truck driver for respondent Mag Mechanical, LLC. In addition to his driving responsibilities, Teslow managed the checkout process for employees using Mag-owned tools pursuant to a policy he helped write. Under that policy, employees could borrow company-owned tools for personal use. But to do so, employees were required to ask a supervisor and record the tool's serial number. If an employee took a tool without following the procedure, it was considered to be theft.

Teslow was arrested on March 26, 2017, on a charge of domestic assault. On March 27, between 2:00 and 3:00 a.m., Teslow called Mag and left a message stating that he would be late that day. Someone from Mag listened to the voice message around 7:00 a.m. and "scheduled accordingly." Around the same time, a woman who lived with Teslow contacted a Mag employee and reported that Teslow was in jail because he had threatened her with a knife and stated that Teslow had stolen Mag-owned tools and company mail in order to get revenge for Mag having underpaid him due to alleged timecard errors.

Mag sent two employees to Teslow's home to investigate. Inside Teslow's open garage and behind his house, they found at least 12 Mag-owned specialty tools with Mag-serial numbers, including, among others, a retractable saw, a circular saw, a quarter-inch impactor, two batteries, an infrared thermometer, and a side grinder, the wholesale value of which totaled around \$750. The Mag employees also found an envelope addressed to Mag that contained an accounts-payable letter. Mag discharged Teslow that day.

Teslow applied for unemployment benefits with the Minnesota Department of Employment and Economic Development (DEED). DEED determined Teslow to be ineligible, and Teslow appealed. Teslow and Mag's chief financial officer (CFO) testified at a hearing with the ULJ. The ULJ found that Mag discharged Teslow for committing three acts: (1) failing to report his absence on March 27 because he said only that he would be late, not absent, (2) stealing tools from Mag that totaled around \$750, and (3) stealing an accounts-payable letter from Mag. Based on those acts, the ULJ concluded that Teslow is ineligible for unemployment benefits because he was discharged for employment misconduct. Teslow requested reconsideration; the ULJ affirmed. This certiorari appeal follows.

D E C I S I O N

Upon review of an unemployment-benefits decision, we may affirm or remand for further proceedings, or we may reverse the ULJ's decision if its "findings, inferences, conclusion, or decision are: . . . made upon unlawful procedure . . . [or] unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d) (Supp. 2017). An employee who is discharged by an employer for employment

misconduct is ineligible to receive benefits. Minn. Stat. § 268.095, subd. 4(1) (2016); *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 343 (Minn. App. 2006). “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.” Minn. Stat. § 268.095, subd. 6(a) (Supp. 2017). Whether an employee committed employment misconduct is a mixed question of law and fact. *Skarhus*, 721 N.W.2d at 344. “Whether the employee committed a particular act is a question of fact.” *Id.* But whether the employee’s act constitutes employment misconduct is a question of law that we review de novo. *Id.*

I.

Teslow does not challenge the ULJ’s legal conclusions that the acts of stealing and failing to report an absence constitute employment misconduct under Minn. Stat. § 268.105, subd. 6(a) (2016). Teslow instead argues that he was “unjustly terminated and that [Mag] failed to show any evidence to show different.”¹ We treat Teslow’s argument as an assertion that the ULJ’s factual findings are unsupported by substantial evidence in the record. 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

¹ In his informal letter brief, Teslow does not cite to any statute, caselaw, or record evidence; he simply restates facts from the hearing and concludes that he was unjustly terminated.

entirety.” *Minn. Ctr. for Env'tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002). We review the ULJ’s factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. *Skarhus*, 721 N.W.2d at 344. We will not disturb the ULJ’s factual findings if the evidence substantially sustains them. *Id.*

We first address the ULJ’s factual finding that Teslow did not report his absence on March 27 after getting arrested for assault. Teslow maintains that he called and left a voice message informing Mag that he would be absent. But in the hearing before the ULJ, Mag’s CFO testified that Teslow called and left a voice message between 2:00 and 3:00 a.m. on March 27, informing Mag that he would be late, not absent. The CFO also testified that he listened to the voice message between 6:00 and 7:00 a.m. on March 27 and reported to management that Teslow would be late. Teslow testified that, although he was almost certain that he said he would be absent, “[he] may have said late because [he] was originally scheduled for court at nine in the morning, so [he] may have thought late.”

The ULJ found that it was “more credible that Teslow only told MAG that he would be late on March 27, 2017.” The ULJ provided two reasons for why it credited the CFO’s testimony: Teslow testified that “he believed that he would have a hearing [on the assault arrest] during the morning of March 27, 2017” and Mag’s CFO testified that he listened to the voice message informing Mag that Teslow would be late and reported that information to management. We defer to the ULJ’s credibility determinations when the ULJ sets forth a valid reason for crediting or discrediting testimony that may significantly impact the ultimate decision. *Ywsfw v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn.

App. 2007); *see also* Minn. Stat. § 268.105, subd. 1a(a) (2016) (providing that where “credibility of a witness testifying in a hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony”). Giving deference to the ULJ’s credibility determinations, we conclude that substantial evidence in the record supports the finding that Teslow did not report his absence.

Second, we address the ULJ’s factual finding that Teslow stole tools from Mag and that Mag employees found the tools on Teslow’s property on March 27. Teslow does not dispute that he took the tools; he instead maintains that the tools could not have been a basis for firing him because Mag did not discover that they were stolen until March 28, one day after he had been fired. We disagree. Mag’s CFO testified that Mag employees found the tools on the same day that the woman who lived with Teslow reported that he had been arrested, which was on March 27. The CFO further testified that Teslow did not follow the checkout policy and that it is considered theft if an employee does not follow the policy.

In the order of affirmation, the ULJ determined that it was more credible that Mag “saw the tools in Teslow’s open garage on March 27, 2017,” which “occurred the day after Teslow was arrested for domestic abuse.” The ULJ reasoned that it would “make[] sense that the alleged victim would report the stolen tools to [Mag] at her earliest opportunity which was the Monday following the alleged abuse.” Giving deference to the ULJ’s credibility determinations, we conclude that the record supports the finding that Teslow stole tools and that Mag discovered the tools on March 27.

Third, we address the ULJ's factual finding that Teslow stole an accounts-payable letter from Mag. At the hearing, Teslow testified that he had "no idea about the letter," but if "anything, it was an accident." Mag's CFO, however, testified that a woman who lived with Teslow reported that he stole mail because he felt that Mag had denied him holiday pay on a recent paycheck. The CFO testified further that two Mag employees found an accounts-payable letter inside Teslow's garage. In addition, the CFO stated that Teslow did not have a business reason to possess the letter and that Mag was three weeks late making a payment because it did not have the letter.

The ULJ reasoned that it was "more credible, and therefore more probable, that Teslow took an accounts payable letter from MAG and did not have a business reason to have it" because "the victim of the alleged domestic assault . . . informed [Mag] that Teslow . . . stole the items in retaliation for [Mag] denying him holiday pay." Giving deference to the ULJ's credibility determinations, we conclude that the record supports the finding that Teslow stole an accounts-payable letter.

II.

Although Teslow has not challenged the ULJ's legal determination that these acts constitute misconduct, and although pro se litigants are "held to the same standards as attorneys," *Heinsch v. Lot 27, Block 1 For's Beach*, 399 N.W.2d 107, 109 (Minn. App. 1987), we will address it briefly in order to provide a complete analysis to a pro se relator. See *Kasson State Bank v. Haugen*, 410 N.W.2d 392, 395 (Minn. App. 1987) (stating that courts have a duty to allow "reasonable accommodation" to pro se litigants so long as there is no prejudice to the adverse party).

We have determined that, under Minn. Stat. § 268.095, subd. 6(a)(1), an employee's act of stealing from an employer amounts to disqualifying misconduct. *Skarhus*, 721 N.W.2d at 344. In *Skarhus*, we determined on the record before us that an employee who had signed a policy statement indicating that she understood that dishonesty and theft constituted grounds for dismissal engaged in employment misconduct when she took food without paying for it. 721 N.W.2d at 344 (citing Minn. Stat. § 268.095, subd. 6(a) (2004)).

Here, the ULJ determined that Teslow's acts of stealing tools, stealing an accounts-payable letter, and failing to report an absence each constituted employment misconduct, reasoning that "[Teslow's] conduct was intentional and displayed clearly a serious violation of the standards of behavior that [Mag] had the right to reasonably expect of [him]." We conclude that the record before us establishes that Teslow engaged in employment misconduct. See Minn. Stat. § 268.095, subd. 6(a); *Skarhus*, 721 N.W.2d at 344. Therefore, the ULJ did not err in determining that Teslow is ineligible for unemployment benefits.

Affirmed.