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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1253**

Mark Johnson,
Relator,

vs.

OSD Transport,
Respondent

Department of Employment and Economic Development,
Respondent

**Filed April 9, 2018
Affirmed
Worke, Judge**

Department of Employment and Economic Development
File No. 137443948

Mark Johnson, Pine River, Minnesota (pro se relator)

OSD Transport, La Farge, Wisconsin (respondent employer)

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

Considered and decided by Peterson, Presiding Judge; Worke, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Relator argues that an unemployment-law judge (ULJ) erred by determining that he is ineligible for unemployment benefits. We affirm.

FACTS

On February 25, 2017, relator Mark Johnson, a truck driver for respondent employer OSD Transport, was driving south on a highway. Johnson called Steven Olson, his supervisor, and told him that the road was covered with ice. Olson told Johnson to pull over and wait for the road crews to treat the highway. At that time, Johnson was near a truck stop. Johnson continued driving for another 15-20 miles. Johnson called Olson again, and Olson again instructed Johnson to find a safe place to stop. Johnson pulled off the highway at the next available ramp, but after he locked the brakes, the truck slid backward down the ramp. Johnson told Olson that he could not continue and was turning around and returning to the terminal. Johnson believed that returning to the terminal would be safer because the northbound lanes had already been treated. Olson told Johnson that when he returned, he should clean out the truck, meaning that he was fired. Johnson turned around and headed north. Another driver met Johnson, picked up his trailers, and continued south to successfully complete delivery.

Johnson applied for but was denied unemployment benefits on the basis that he was discharged for employment misconduct. Johnson appealed, and a hearing was held before a ULJ. The ULJ determined that Johnson was ineligible for unemployment benefits because he was discharged due to employment misconduct. The ULJ also concluded that

OSD did not violate federal regulations relating to the operation of commercial motor vehicles in hazardous weather conditions. After Johnson's request for reconsideration was denied, this certiorari appeal followed.

DECISION

Johnson argues that the ULJ erred in determining that he is ineligible for unemployment benefits. Whether an employee engaged in conduct disqualifying that person from unemployment benefits is a mixed question of fact and law. *White v. Univ. of Minn. Physicians Corp.*, 875 N.W.2d 351, 354 (Minn. App. 2016). "Whether [an] employee committed a particular act is a question of fact." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). "[W]e review findings of fact in the light most favorable to the ULJ's decision and will rely on findings that are substantially supported by the record." *Fay v. Dep't of Emp't & Econ. Dev.*, 860 N.W.2d 385, 387 (Minn. App. 2015) (quotation omitted). This court defers to the ULJ's credibility determinations. *McNeilly v. Dep't of Emp't & Econ. Dev.*, 778 N.W.2d 707, 710 (Minn. App. 2010). Whether an act committed by an employee constitutes employment misconduct is a question of law that we review de novo. *Skarhus*, 721 N.W.2d at 344.

An applicant who was discharged from employment is ineligible for unemployment benefits if "the applicant was discharged because of employment misconduct." Minn. Stat. § 268.095, subd. 4(1) (2016). Employment misconduct is "any intentional, negligent, or indifferent conduct, on the job or off the job that displays . . . (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) (2016).

The ULJ concluded that Johnson's refusal to follow Olson's directions was insubordinate and that Johnson seriously violated his employer's reasonable expectations and showed a substantial lack of concern for his employment. Olson testified that he instructed Johnson to stop when he was near a truck stop but that Johnson disregarded that instruction. Admittedly, Johnson and Olson offered contradictory testimony as to the number and content of their conversations. Olson testified that Johnson called him twice, and that he instructed Johnson to stop on both occasions. Johnson testified that he called Olson three times, and that Olson instructed him to only reduce his speed during the first call. Johnson testified that Olson told him to pull over and wait for the roads to clear on the second and third calls, but that he would have needed to continue driving six more miles in hazardous conditions to reach a truck stop.

The ULJ considered these differing accounts and concluded that Olson's testimony was more credible because it was straightforward, direct, described the more likely series of events, and was detailed and specific. The ULJ determined that Johnson's testimony was less credible because it described the less likely series of events and was "somewhat self-serving." We defer to the ULJ's credibility determinations. *McNeilly*, 778 N.W.2d at 710. Because the record contains testimony that Johnson was insubordinate and continued driving in hazardous conditions contrary to the instructions of his supervisor, we conclude that the ULJ's findings to that effect are supported by substantial evidence. Furthermore, we agree with the ULJ that Johnson's conduct seriously violated OSD's reasonable expectations and demonstrated a substantial lack of concern for his employment.

Johnson argues that he was not insubordinate because his actions were protected by federal regulations. Federal regulations mandate that “[e]xtreme caution in the operation of a commercial motor vehicle shall be exercised when hazardous conditions, such as those caused by snow [or] ice . . . adversely affect visibility or traction.” 49 C.F.R. § 392.14 (2016). “If conditions become sufficiently dangerous, the operation of the commercial motor vehicle shall be discontinued and shall not be resumed until the commercial motor vehicle can be safely operated.” *Id.* If compliance with that rule “increases hazard to passengers, the commercial motor vehicle may be operated to the nearest point at which the safety of passengers is assured.” *Id.*

Johnson claims that, pursuant to this federal regulation, he was obligated and entitled to turn around and that this decision cannot constitute employment misconduct. However, the federal regulation states that operation of the commercial motor vehicle must be discontinued if the conditions are sufficiently dangerous, and Olson testified that he instructed Johnson to stop the truck. *See id.* Johnson disregarded Olson’s instruction and continued driving for 15-20 miles. We conclude that Olson’s instruction did not violate the federal regulation and that Johnson’s decision to continue driving in hazardous conditions was not protected by federal regulations.

Because the record contains substantial evidence that Johnson was insubordinate and violated his employer’s reasonable expectations, we conclude that the ULJ did not err by concluding that Johnson is not entitled to unemployment benefits.

Affirmed.