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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0213
A18-0214**

Mark V. Reeder,
Relator,

vs.

P & B Transportation Inc.,
Respondent (A18-0213),

Duane Kottke Trucking Corp.,
Respondent (A18-0214)

Department of Employment and Economic Development,
Respondent.

**Filed October 22, 2018
Affirmed
Bjorkman, Judge**

Department of Employment and Economic Development
File No. 138432028

Mark V. Reeder, Marshall, Minnesota (pro se relator)

P&B Transportation, Inc., Bismarck, North Dakota (respondent employer)

Duane Kottke Trucking Corp., Buffalo Lake, Minnesota (respondent employer)

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

Considered and decided by Hooten, Presiding Judge; Halbrooks, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

In these consolidated appeals, relator challenges two decisions by an unemployment-law judge (ULJ) affirming (1) a decision that relator is ineligible for benefits because he quit employment and (2) dismissing reconsideration of a decision that he is ineligible for unemployment benefits because he was discharged for employment misconduct. We affirm.

FACTS

Relator Mark Reeder is a commercial truck driver. He began working for respondent P & B Transportation, Inc. (P&B) on July 17, 2017. That day, Reeder observed the P&B president shaking his head nearby and inferred that he did not want Reeder working there. Shortly thereafter, Reeder became frustrated with a broker who directed him to a weigh station that was out of Reeder's way. Reeder quit on July 28.

On August 1, Reeder began working for respondent Duane Kottke Trucking, Inc. (DKT). He was discharged on August 13, after he refused to deliver a load of beer from a St. Louis Anheuser Busch distributor, explaining for the first time that he refuses to haul Anheuser Busch products.

Reeder applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) determined that Reeder quit employment with P&B and is therefore ineligible for benefits. DEED separately determined that Reeder was discharged from DKT for employment misconduct, also

making him ineligible for benefits. Reeder appealed both ineligibility determinations through DEED's online system.

A ULJ conducted separate evidentiary hearings in each appeal. The ULJ determined that Reeder is ineligible for unemployment benefits because he was discharged by DKT for employment misconduct. In a separate decision, the ULJ determined that Reeder also is ineligible for benefits because he quit employment with P&B. Each ineligibility decision included a notice explaining that Reeder could request reconsideration by logging into his online unemployment-benefits account, by fax, or by mail, and that the decision would "be final unless a request for reconsideration is filed with the unemployment law judge on or before Wednesday, November 15, 2017."

Reeder did not file a request for reconsideration online, by fax, or by mail. But on November 15, he sent two emails to DEED customer service: the first indicated that he was requesting reconsideration of the P&B ineligibility determination, and the second indicated that he was requesting reconsideration of the DKT ineligibility determination.

The ULJ received only the P&B email but processed a request for reconsideration with respect to each ineligibility determination.¹ The ULJ issued orders affirming Reeder's P&B ineligibility determination and dismissing reconsideration of his DKT ineligibility determination on the ground that "there was no request for reconsideration filed for this issue within the request for reconsideration period."

¹ As DEED observes, the ULJ "likely recognized that for Reeder to be paid unemployment benefits he would have to prevail in both the P&B matter, as well as the DKT matter."

Reeder appealed both orders by writ of certiorari. DEED moved to dismiss both appeals, arguing that email is not a proper method for requesting reconsideration, depriving the ULJ and, in turn, this court of authority to address reconsideration. We denied the motions because this court has a statutory obligation to review a ULJ's decision on reconsideration, Minn. Stat. § 268.105, subd. 7(a) (2016), and "DEED's arguments regarding the ULJ's authority to rule on the emailed requests for reconsideration go to the merits of these appeals, rather than this court's jurisdiction to hear them." We consolidated the appeals for decision.

DECISION

When reviewing the decision of a ULJ, we may affirm the decision, remand it for further proceedings, or reverse or modify it if the substantial rights of the petitioner have been prejudiced because the findings, inferences, conclusion, or decision are "(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious." Minn. Stat. § 268.105, subd. 7(d) (2016). We defer to the ULJ's credibility determinations and will uphold factual findings if they are supported by substantial evidence in light of the entire record. *Cunningham v. Wal-Mart Assocs., Inc.*, 809 N.W.2d 231, 235 (Minn. App. 2011). We apply a de novo standard when reviewing questions of law, such as statutory interpretation, *Superior Glass, Inc. v. Johnson*, 896 N.W.2d 137, 142 (Minn. App. 2017), or whether the established facts make an applicant ineligible for employment benefits, *Cunningham*, 809 N.W.2d at 235.

I. The ULJ had the authority to rule on emailed requests for reconsideration.

If a ULJ determines that an applicant is ineligible for unemployment benefits, the applicant has 20 calendar days to request reconsideration of that decision. Minn. Stat. § 268.105, subd. 2(a) (2016). If no request for reconsideration is “filed” within that time frame, the ULJ’s decision is final, *id.*, subd. 1a(a) (2016), and the ULJ “is deprived of jurisdiction to conduct further review,” *Rowe v. Dep’t of Emp’t & Econ. Dev.*, 704 N.W.2d 191, 196 (Minn. App. 2005).

DEED argues that the ULJ lacked jurisdiction to rule on Reeder’s emailed requests for reconsideration because Reeder failed to “file” his requests for reconsideration using a “legally recognizable” method. We disagree. DEED’s authority, and that of its ULJs, is defined by statute. *Rowe*, 704 N.W.2d at 194. With respect to requests for reconsideration, the relevant statute not only permits but requires a ULJ to address any request that is timely “filed.” Minn. Stat. § 268.105, subd. 2(f) (2016). But this statute, which governs all appeals of eligibility determinations, does not delineate how requests for reconsideration are to be “filed.”

Other provisions of the unemployment insurance law provide no support for DEED’s argument. The statutory definition of “filed” addresses only when filing occurs for purposes of personal, mail, and electronic action. Minn. Stat. § 268.035, subd. 17 (2016). And the only statutory provisions addressing how items should be filed are permissive: DEED “may allow” an applicant to file a request for reconsideration “by electronic transmission” and “may restrict the manner and format” for doing so, provided it clearly communicates how to do so. Minn. Stat. § 268.103, subd. 1(a), (b), (d) (2016);

see also Minn. Stat. § 645.44, subd. 15 (2016) (stating that “may” is permissive). In short, DEED may require applicants to file requests for reconsideration online, rather than by email, but that requirement is not jurisdictional and does not preclude a ULJ from considering a timely email request for reconsideration.

II. The ULJ did not err by affirming the decision that Reeder is ineligible for benefits because he quit employment with P&B.

Reeder argues that he is eligible for unemployment benefits because he had a good reason to quit his employment with P&B. An applicant who quits employment is ineligible for benefits unless he quit “because of a good reason caused by the employer.” Minn. Stat. § 268.095, subd. 1(1) (2016). A good reason for quitting is, in relevant part, one “that would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.” Minn. Stat. § 268.095, subd. 3(a)(3) (2016). We are not persuaded that observing the company president shake his head and being told on one occasion to pull into what the employee considers an inconvenient weigh station would compel an average, reasonable worker to quit and become unemployed. This is particularly so when the employee did not inquire as to the reasons for the actions.

III. The ULJ did not err by dismissing Reeder’s request for reconsideration of the decision that DKT discharged Reeder for employment misconduct.

Reeder asserts several challenges to the ULJ’s decision that he is ineligible for unemployment benefits because he was dismissed from DKT for employment misconduct. But the ULJ did not affirm that decision on reconsideration; he dismissed Reeder’s challenge because “there was no request for reconsideration filed for [the DKT] issue within the request for reconsideration period.” As noted above, DEED may permit

electronic transmission of reconsideration requests and has discretion over the “manner and format” for doing so. Minn. Stat. § 268.103, subd. 1(a), (b), (d). Because Reeder does not dispute that he failed to file his reconsideration request in the manner that DEED directed, we discern no error in the ULJ’s dismissal of his request. Nonetheless, in the interests of justice, we also address Reeder’s substantive arguments.

An employee who was discharged for employment misconduct is ineligible for unemployment benefits. 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 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) (2016). “As a general rule, refusing to abide by an employer’s reasonable policies and requests amounts to disqualifying misconduct.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

During the evidentiary hearing, the parties presented extensive testimony about the circumstances of Reeder’s employment with and discharge from DKT. The ULJ found, based on the testimony of DKT’s representative, that (1) DKT hired Reeder in substantial part to haul Anheuser Busch products, (2) Reeder did not mention during the hiring process that he was unwilling to haul Anheuser Busch products and does not have a reasonable basis for refusing to do so, and (3) Reeder was subsequently assigned and refused to deliver a load of Anheuser Busch products, leading DKT to discharge him. Substantial evidence supports these findings.

In challenging the ULJ's determination that he was discharged for employment misconduct, Reeder first argues that the ULJ improperly failed to consider that the former owner of a Tennessee Anheuser Busch distributorship "squared his back to Relator in June 1977," initiating a campaign of harassment that continues to this day.² And Reeder points out that DKT facilitated his return home on the day he refused to make the assigned delivery. But neither fact impacts whether Reeder committed employment misconduct by refusing to perform the work he was hired to do, or whether DKT discharged him for that misconduct.

Reeder next asserts that the ULJ failed to account for Minn. Stat. § 268.095, subd. 6(d) (2016), which states that if "the conduct for which the applicant was discharged involved only a single incident, that is an important fact that must be considered in deciding whether the conduct rises to the level of employment misconduct." We are not persuaded. Reeder's categorical refusal to deliver any Anheuser Busch products, while manifested in a single incident, had broad implications for his employment. As the DKT representative explained, she would not have hired Reeder had she been aware he would refuse Anheuser Busch deliveries. Accordingly, the ULJ did not err by declining to address the provision Reeder highlights.

² Reeder refuses to haul Anheuser Busch products because he believes that the former owner of a Tennessee Anheuser Busch distributorship (and former governor of Tennessee) began a negative campaign against him in 1977 that continues (despite the former owner's 2011 death) and results in him being harassed at Anheuser Busch facilities across the country.

Finally, Reeder argues that the ULJ was biased and unprofessional because he asked probing questions about Reeder's history and mental health. This argument is unavailing. Our careful review of the record reveals that the ULJ sought to understand Reeder's unusual and long-standing prejudice against Anheuser Busch, and consider whether it was founded in a mental illness that could excuse his conduct for purposes of unemployment-benefits eligibility. See Minn. Stat. § 268.095, subd. 6(b)(1) (2016). This is consistent with the ULJ's obligation to conduct a neutral "evidence-gathering inquiry" and "assist all parties in the presentation of evidence." Minn. R. 3310.2921 (2017).

In sum, the ULJ was authorized to consider Reeder's two reconsideration requests, but did not err by declining to consider a request not filed as directed by DEED. Substantial evidence supports the ULJ's underlying findings of fact. And we discern no legal error in the ULJ's determinations that Reeder is ineligible for unemployment benefits.³

Affirmed.

³ Reeder also argues that he was deprived of due process because the same ULJ decided his eligibility and addressed his requests for reconsideration. Because Reeder neither explains his argument nor supports it with legal authority, this argument is waived. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971).