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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0984**

Sokkhan Ka,
Relator,

vs.

Lonvigson's Service Center, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed January 14, 2019
Affirmed
Reilly, Judge**

Department of Employment and Economic Development
File No. 36375503-3

Sokkham Ka, Shoreview, Minnesota (pro se relator)

Lonvigson's Service Center, Inc., Minneapolis, Minnesota (pro se respondent employer)

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

Considered and decided by Reilly, Presiding Judge; Schellhas, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

REILLY, Judge

Relator challenges the determination of an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he was discharged for employment misconduct. Relator challenges the factual and credibility determinations of the ULJ and argues that the ULJ erred by not granting his request for an additional hearing. Because substantial evidence supports the ULJ's determination that relator committed employment misconduct, we affirm.

FACTS

Relator Sokkhan Ka worked as a cashier at respondent Lonvigson's Service Center from September 2016 until his discharge on March 5, 2018. Ka was terminated for various reasons, including: chronic tardiness; failing to contact the police when he felt he was in danger; clocking in when he was not scheduled; using drugs/alcohol before work; and adjusting the store temperature to 80 degrees, causing an inventory loss.

Following his discharge, Ka sought unemployment benefits with the Department of Employment and Economic Development (DEED). The administrative clerk issued a determination of ineligibility finding that Ka was discharged for employment misconduct. Ka appealed the determination and the ULJ conducted a telephonic hearing on April 23 and April 24, 2018. Ka was represented by his fiancée, Tanya Huerd, at the hearing. The general manager of the gas station, the owner, Ka, and Huerd each testified. The ULJ issued a decision, determining that Ka was terminated for employee misconduct and thus

ineligible to receive unemployment benefits. Ka requested reconsideration of the ULJ's decision citing new evidence, but was denied.

This certiorari appeal follows.

D E C I S I O N

I. Employment misconduct

The ULJ found that Ka committed employment misconduct and was disqualified from receiving unemployment benefits. See Minn. Stat. § 268.095, subd. 4(1) (2016) (stating that an employee is ineligible for unemployment benefits if discharged for employment misconduct). This court reviews a ULJ's decision to determine if 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).

“Whether an employee committed misconduct is a mixed question of fact and law.” *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Employment misconduct is “any intentional, negligent, or indifferent conduct” that clearly 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.” Minn. Stat. § 268.095, subd. 6. Whether the employee committed a specific act is an issue of fact, which this court views in the light most favorable to the ULJ's decision. *Stagg v. Vintage Place, Inc.*, 796 N.W.2d 312, 314 (Minn. 2011). Whether the “act committed by the

employee constitutes misconduct is a question of law, which we review de novo.” *Skarhus*, 721 N.W.2d at 344.

Ka challenges various findings and the ultimate decision by the ULJ. First, he contests the ULJ’s credibility determinations. Second, he argues that multiple factual findings are unsupported by substantial evidence. Lastly, he argues that multiple errors by the ULJ, including admitting hearsay evidence, referencing his authorized representative as his fiancée, and allowing testimony about his potential gang membership, “had a bearing on the outcome of the case.”

Credibility determinations and factual findings

Ka argues that the ULJ erred by determining that his testimony was less credible than the employer’s. Because the credibility of the involved parties testifying had a “significant effect on the outcome of [the] decision,” the ULJ had to “set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1(c) (2018). Here, the ULJ found the manager’s testimony more credible because it was “specific and detailed, and far more logical than Ka’s.” Further, the ULJ found that Ka changed his story mid-hearing, appeared coached by his representative, had a history of lying, and provided “bizarre” explanations for his behavior. The ULJ adequately set out the reasons for its credibility determinations and those determinations are supported by the record. *See Ywswf v. Teleplan Wireless Servs. Inc.*, 726 N.W.2d 525, 532-33 (Minn. App. 2007) (stating that the ULJ may consider whether the testimony is reasonable when compared to other evidence and any other factors that bear on believability when evaluating the credibility of witnesses). Because “[c]redibility determinations are the exclusive province of the ULJ

and will not be disturbed on appeal,” the ULJ did not err in its credibility findings. *Skarhus*, 721 N.W.2d at 344.

Ka also challenges the ULJ’s factual findings regarding his tardiness on February 25 and his actions on March 2. This court views “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 (citations omitted). To affirm the ULJ, there must be substantial evidence supporting the factual findings. 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 entirety.” *Minn. Ctr. For Env’tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

There is substantial evidence supporting the ULJ’s finding that Ka was three hours late for work on February 25.¹ Ka testified on the first day of the hearing that he was late on February 25 because of a snowstorm. When pressed for details, Ka testified that it took him three hours to get from his home in Shoreview to his workplace in Minneapolis. His representative interjected, and stated that Ka was late because of an appointment with his county worker. The hearing was continued for the next day, where Ka then testified that he was never tardy on February 25, but he was three hours late on February 8 because of the county worker appointment. Given the ULJ’s credibility determination, the testimony of the general manager, and the record evidence that Ka changed his testimony multiple

¹ The general manager testified that Ka was scheduled to start work at 8:00 a.m., but did not appear until shortly after 11:00 a.m.

times, there is substantial evidence supporting the ULJ's finding that he was three hours late for work on February 25.

There is substantial evidence to support the ULJ's factual findings regarding Ka's tardiness. The ULJ found that Ka was scheduled to work on March 2, but showed up ten minutes late to his shift. He told the general manager he had to exchange his coins for dollar bills "in order to make a purchase at the liquor store, because the liquor store would not accept more than \$2 in change." Ka then left the store and did not return until approximately 45 minutes later for his shift. The record shows that there was no dispute over whether Ka left his shift for 45 minutes. Instead, Ka argues that the factual finding regarding *why* he left is incorrect and his 45-minute absence was part of his dinner break.

At the hearing, Ka stated that he was exchanging his coins so he could give the dollar bills to his son, who would use the money to purchase food. However, the general manager testified that Ka exchanged the money to purchase alcohol. Given the record evidence that Ka was absent for 45 minutes, the credibility determinations of the ULJ, and Ka's inconsistent explanations, there is substantial evidence supporting the ULJ's finding regarding his tardiness on March 2.

Ka states that his behavior did not constitute employment misconduct. However, given the substantial evidence to support the ULJ's factual findings and Ka's multiple incidents of misconduct that had a significant adverse impact on the employer, Ka committed employment misconduct. See Minn. Stat. § 268.095, subd. 6(d) (stating that it is important to consider if the conduct involved a single incident); *Skarhus*, 721 N.W.2d at

344 (affirming ULJ's determination of misconduct because the employer could no longer trust the employee after their actions had a "significant adverse impact on the employer").

Potential Prejudice

Ka argues that multiple errors by the ULJ, including admitting hearsay evidence, referencing his authorized representative as his fiancée, and allowing testimony about his potential gang membership, "had a bearing on the outcome of the case." With regard to Ka's argument that hearsay is inadmissible, it is well settled that "a ULJ may receive any evidence which possesses probative value, including hearsay." *Skarhus*, 721 N.W.2d at 345. Therefore, Ka's first argument fails.

Ka next argues that the ULJ had a "conflict of interest prejudgment" because it stated in its determination that Ka's authorized representative was his fiancée. While it is true that the ULJ stated that Ka's "fiancée, Tanya Huerd, represented him at the trial," there is no evidence that this affected the decision. Additionally, Ka submitted into evidence multiple documents that identified Huerd as his fiancée, and even submitted an affidavit by Huerd where she stated, "I am the fiancée to [Ka]." Therefore, Ka's second argument fails.

Ka lastly argues that testimony profiling him as a gang member "weighed significantly on the overall decision." The general manager testified that a customer submitted a complaint regarding Ka, but remained anonymous because he believed that Ka was a gang member. The ULJ asked the general manager how the customer knew he was a gang member and she replied that Ka "wears all red. He also drives a Mitsubishi Lancer that is all red with the plates that say blooded. He also wears multiple items of clothing

that are affiliated with the gang.” While it does not seem that this testimony had any probative value, it also did not affect the outcome of the hearing. The ULJ made no mention of this testimony in the written determination and did not pursue any further evidence regarding Ka’s alleged gang membership. Therefore, Ka’s third argument fails.

Because there was substantial evidence to support the ULJ’s factual findings and no evidence that the ULJ’s determination was prejudicially decided, the ULJ did not err by determining that Ka committed employment misconduct.

II. Additional Hearing

As a preliminary matter, Ka argues that not receiving a new hearing violated his due process and equal protection rights. However, he does not explain his argument or provide any case law to support his statements. Therefore, this court will not address these arguments. *See Liptak v. State ex rel. City of New Hope*, 340 N.W.2d 366, 367 (Minn. App. 1983) (stating that “[w]hile some latitude and consideration is provided by all courts to persons appearing pro se, we cannot permit bending of all rules and requirements”); *State v. Sontoya*, 788 N.W.2d 868, 876 (Minn. 2010) (noting that failure to cite legal authority or articulate an argument waives the issues).

Ka additionally argues that the ULJ erred in its June 2018 order by not granting him an additional evidentiary hearing so that he could present evidence regarding his chemical dependency. The ULJ may initially consider newly discovered evidence for the purpose of determining whether an additional evidentiary hearing is necessary. Minn. Stat. § 268.105, subd. 2(c). The ULJ must order an additional evidentiary hearing if the new evidence “(1) would likely change the outcome of the decision and there was good cause

for not having previously submitted the evidence; or (2) would show that the evidence that was submitted at the evidentiary hearing was likely false and that the likely false evidence had an effect on the outcome of the decision.” *Id.* “This court will not reverse a ULJ’s decision to deny an additional evidentiary hearing unless the decision constitutes an abuse of discretion.” *Kelly v. Ambassador Press, Inc.*, 792 N.W.2d 103, 104 (Minn. App. 2010).

Here, the ULJ determined that Ka did not satisfy the first or second statutory requirements for an additional hearing based on the new evidence. First, the ULJ determined that Ka did not satisfy the first prong because he did not show good cause for failing to include the evidence and did not explain how the new evidence would affect the outcome. Second, the ULJ determined that Ka did not satisfy the second prong because he “has not shown that likely false evidence affected the outcome of the decision” and he instead “doubles down” on his “unbelievable story in his request for reconsideration.”

Ka submitted three documents on reconsideration, including a chemical dependency evaluation indicating that he is diagnosed as chemically dependent. DEED concedes that Ka had good cause for not submitting this document, because it is dated after the hearing. However, DEED argues that Ka makes no offer of proof regarding if his chemical dependency would affect the outcome of the case.

In order for Ka’s chemical dependency to affect the outcome of the case, his employment misconduct must have been “a consequence of [his] chemical dependency.” Minn. Stat. § 268.095, subd. 6(b)(9) (2018). Ka vaguely asserts that his chemical dependency causes paranoia, which affected certain events that took place during his employment. However, he offered no explanation or evidence to show that his various acts

of misconduct, such as his tardiness, turning up the heat, failing to call the police when he felt he was in danger, and clocking in when he was not scheduled, were a result of his chemical dependency. The ULJ did not commit reversible error by concluding that Ka did not satisfy the statutory requirements for an additional hearing on new evidence.

Affirmed.