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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1160**

Donald Thaemert,
Relator,

vs.

Electrolux Home Appliances,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed April 8, 2019
Affirmed
Reyes, Judge**

Department of Employment and Economic Development
File No. 36341426

Donald Thaemert, Sauk Rapids, Minnesota (pro se relator)

Electrolux Home Products c/o TALX Employer Services, LLC, St. Louis, Missouri (pro se employer)

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

Considered and decided by Reyes, Presiding Judge; Hooten, Judge; and Cochran, Judge.

UNPUBLISHED OPINION

REYES, Judge

Relator challenges the determination by an unemployment-law judge (ULJ) that he does not qualify for unemployment benefits. Because substantial evidence supports the ULJ's determination that relator committed employment misconduct, we affirm.

FACTS

Relator Donald Thaemert began working at Respondent Electrolux Home Products Inc. (Electrolux) in April 2009. He worked on manufacturing freezers in general production. Electrolux has a policy prohibiting employees from using, or being under the influence of, illegal drugs while working.

On January 26, 2018, relator showed signs of being under the influence of drugs while at work. Electrolux gave him a drug test, which came back positive for marijuana. Electrolux placed relator on an indefinite suspension that day. On February 7, 2018, relator signed a "last chance agreement" with Electrolux, in which he agreed that, before he would be allowed to return to work, he must pass a drug test. The agreement also stipulated that, if relator were to test positive for drugs again while at work, his employment would end. Relator retested in March, and the results were negative. A few days after he returned to work, Electrolux again suspected relator to be under the influence and tested him for drugs. He tested positive, and Electrolux discharged him.

Relator applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED), after initially paying benefits, issued a determination of ineligibility, which resulted in an overpayment of benefits. Relator

appealed. A ULJ held an evidentiary hearing on April 26, 2018. Relator testified at the hearing that the reason he continued to use marijuana “was because of my diabetes and, like I say, I’ve been trying to reach out for prescription.” He also testified that he did not understand that he was not eligible for benefits and that “I should not have, have to pay that back because, you know, I wasn’t informed that I wasn’t eligible through unemployment or through the company at all.”

On May 1, 2018, the ULJ held that relator was ineligible for unemployment benefits because he was suspended without pay for an indefinite period of time and under Minnesota law, he “is considered to have been discharged from employment at that time.” The ULJ explained that “[relator] had a safety sensitive production position and was aware of the employer’s expectations regarding drugs. He knowingly used marijuana without a prescription. [Relator’s] conduct was intentional and he displayed clearly a serious violation of the employer’s reasonable expectations regarding drug use.” This decision resulted in “an overpayment of unemployment benefits in the amount of \$1,715.00.”

Relator requested reconsideration of that decision, and the ULJ affirmed. This certiorari appeal follows.

D E C I S I O N

Relator argues that he should not have to pay back the overpaid benefits because respondents misinformed him about whether he was eligible. Relator’s argument is misguided.

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) (2018).

Unemployment benefits are intended to provide financial assistance to persons who have been discharged from employment “through no fault of their own.” *Stagg v. Vintage Place, Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted). Accordingly, a person who has been discharged from employment based on “employment misconduct” is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4 (2018); *Stagg*, 796 N.W.2d at 314.

“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 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) (2018). 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*, 796 N.W.2d at 314. 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.

Relator here does not dispute that he committed employment misconduct. Instead, he maintains that he “was misinformed as to whether [he] was eligible.” He asserts that,

because of this, he should not have to pay back the overpaid benefits. However, there is nothing in the law to support this argument. Whether Electrolux misinformed relator is immaterial. Minn. Stat. § 268.069, subd. 2 (2018), states that “[a]ny agreement between an applicant and an employer is not binding on the commissioner in determining an applicant’s entitlement. There is no presumption of entitlement or nonentitlement to unemployment benefits.” The law further maintains that “[t]here is no equitable or common law denial or allowance of unemployment benefits.” Minn. Stat. § 268.069, subd. 3 (2018).

To the extent that relator argues that he was not discharged, but rather indefinitely suspended, the law also states that “[a] suspension from employment without pay that is of an indefinite duration or is for more than 30 calendar days is considered a discharge at the time the suspension begins.” Minn. Stat. § 268.095, subd. 5(b) (2018). And relator admitted that Electrolux suspended him in January 2018 for an indefinite period of time.

Here, the ULJ found that relator continued to use marijuana, in violation of Electrolux’s drug policy. The ULJ further found that this conduct was intentional and displayed a serious violation of the employer’s reasonable expectations. As a result, the ULJ concluded that relator engaged in employment misconduct. The ULJ’s findings and conclusion are supported by substantial evidence. Therefore, relator must pay back the overpaid benefits he received during that period.

Affirmed.