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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1165**

Pamela Powell,
Relator,

vs.

Wal-Mart Associates, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 1, 2019
Affirmed
Stauber, Judge***

Department of Employment and Economic Development
File No. 36405151-3

Pamela Powell, Chanhassen, Minnesota (pro se relator)

Wal-Mart Associates, Inc., c/o TALX UCM Services, Inc., St. Louis, Missouri (respondent employer)

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

Considered and decided by Schellhas, Presiding Judge; Slieter, Judge; and Stauber, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

STAUBER, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that she is ineligible for unemployment benefits because she was discharged for unemployment misconduct. We affirm.

FACTS

Relator Pamela Powell was employed full-time as a department manager at respondent Wal-Mart Associates Inc. from October 10, 2017, to February 22, 2018. The first week in February 2018, Andrew Peterson, an asset-protection assistant manager, noticed Powell leave the store just after 3:00 p.m., although she was scheduled to work until 3:30 p.m. When employees told Peterson that they could not find Powell the rest of the day, he watched closed circuit television (CCTV) tapes and saw Powell leave and not return. Peterson began an investigation and discovered that between January 15, 2018, and February 16, 2018, Powell falsely reported working 470 minutes that she did not work. Powell was discharged for payroll-integrity violations.

Powell established an account with respondent Minnesota Department of Employment and Economic Development (DEED). DEED determined that Powell was ineligible for benefits because she was discharged for employment misconduct. Powell appealed, and a ULJ held a hearing. An attorney represented Powell at the hearing.

Peterson testified that employees are paid for every minute on the clock. If an employee forgets to punch in or out, an electronic-time-adjustment system (ETA) allows the employee to manually edit the time punches. The ETA's main menu alerts: "The

falsification of, or failure to record complete and accurate time records, is a violation of company policy and can lead to disciplinary action, up to and including termination.”

Peterson testified that he verified when Powell left the store by using the vestibule entrance/exit camera and parking-lot cameras and compared that to when she punched out. As one example of Powell’s ETA editing, on January 15, Powell left at 3:04 p.m., but did not clock out and later edited her clock-out time to 3:30 p.m. Powell consistently repeated this behavior through February 16, 2018, accumulating 470 minutes of reported work time that she did not work.

Peterson testified that the employer’s attendance policy is available to every employee. Under the policy, an employee receives one paid 15-minute break if she works between three and six hours in a day, and two 15-minute breaks if she works over six hours in a day. The policy prohibits breaks from being attached or combined with a meal period without approval. Additionally, breaks may not be taken at the beginning or end of a shift. The policy offers employees working more than six consecutive hours an unpaid 30-minute meal period that may extend up to 60 minutes with approval. Peterson testified that there is no policy allowing an employee who did not take a break to edit her end-time to a later time to account for missing a break.

Powell admitted knowledge of the attendance policies. Powell did not dispute the CCTV evidence or the ETA entries. Powell suggested that she may have left early because she had not taken breaks.

The ULJ found that Powell was, or should have been, aware of Wal-Mart’s policies. The ULJ found that Peterson “meticulously” compared Powell’s ETA edits with the CCTV

tapes and her work schedule. The ULJ found that Powell falsified her time records and cheated the employer out of 470 minutes of time that she claimed she worked. The ULJ determined that this was employment misconduct that made Powell ineligible for unemployment benefits.

Powell requested reconsideration, claiming that the ULJ “hid relevant information in her findings,” her attorney was biased against her, the ULJ allowed the employer to speak the majority of the time at the hearing, the employer failed to “regularly calculate credits in [her] favor,” the ULJ protected the employer from labor-law violations, and the employer is a non-entity because it changed its legal name. The ULJ affirmed the decision, finding Powell’s allegations to be unwarranted, confusing, and irrelevant. This certiorari appeal followed.

D E C I S I O N

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). 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).

The ULJ found that Powell committed employment misconduct and was ineligible for unemployment benefits. See Minn. Stat. § 268.095, subd. 4(1) (2018) (stating that an employee is ineligible for unemployment benefits if discharged for employment misconduct). “Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). 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, 315 (Minn. 2011). “[W]hether the act committed by the employee constitutes employment misconduct is a question of law, which we review de novo.” *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(a) (2018). “[R]efusing to abide by an employer’s reasonable policies and requests amounts to disqualifying misconduct.” *Schmidgall*, 644 N.W.2d at 804. Multiple violations of the same rule demonstrates an employee’s substantial lack of concern for the employment. See *Gilkeson v. Indus. Parts & Serv., Inc.*, 383 N.W.2d 448, 452 (Minn. App. 1986) (noting an employee’s pattern of rule violations constituted misconduct).

Additionally, “[d]ishonesty that is connected with employment may constitute misconduct.” *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305, 307-08 (Minn. App. 1994)

(concluding that employee who falsely claimed to have trained store managers, coupled with his failure to perform his responsibilities, committed employment misconduct); *see also Frank v. Heartland Auto. Servs., Inc.*, 743 N.W.2d 626, 630-31 (Minn. App. 2008) (concluding that a single act of dishonest conduct can constitute employment misconduct because employer has the right to rely on integrity of employees). Further, failing to abide by an employer's timecard policy and falsely reporting time worked may constitute employment misconduct. *McKee v. Cub Foods, Inc.*, 380 N.W.2d 233, 236 (Minn. App. 1986); *see also Ruzynski v. Cub Foods, Inc.*, 378 N.W.2d 660, 662-63 (Minn. App. 1985) (holding that employee who left work ten minutes earlier than indicated on his timecard, without approval, committed employment misconduct).

Here, the ULJ found that Powell falsified her time records. Based on the relevant statute and caselaw, this act is employment misconduct because it is false reporting of time worked, repeated acts of dishonesty, and refusal to abide by the employer's reasonable policy that an employee truthfully report hours worked. *See Skarhus*, 721 N.W.2d at 344 (stating that it is a question of law whether an act constitutes employment misconduct).

Powell challenges the factual finding that she falsified her time records. *See Stagg*, 796 N.W.2d at 315 (whether the employee committed an act is an issue of fact). This court views the ULJ's decision on a fact issue in the light most favorable to the decision. *Id.* Additionally, this court defers to the ULJ's credibility determinations. *Skarhus*, 721 N.W.2d at 344. When, as is the case here, the credibility of the parties testifying had a "significant effect on the outcome of [the] decision," the ULJ must "set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1a(a) (2018); *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).

Here, Peterson provided information from the ETA, CCTV recordings, and the employer's policies. The ULJ found that "Peterson's testimony is more credible than Powell's testimony, because it is a more convincing, detailed, reliable, and likely explanation of events, corroborated by the ETA records, which are in evidence." The ULJ found Powell to be "nonresponsive," and not clear or sensible. The ULJ found that Powell seemed to change her testimony as she weighed what the employer could prove. The ULJ's credibility findings are supported by the record and entitled to deference, and the ULJ did not err in finding that Powell falsified her time records.

As she did in her request for reconsideration, Powell raises many issues in her prose brief to this court. She claims that "[n]o policy was presented regarding clock-in and clock-out adjustments," her attorney "appeared with a conflict of interest," she was retaliated against for asserting her right to be paid for breaks, she was never informed that she "could not take her earned time by working through breaks and lunches," another employee could have clocked in or out for her, the ULJ had a duty to off-set any non-payment of wages to determine whether wage-theft occurred, and the employer failed to gain jurisdiction. But there is no evidence in the record to support any of Powell's claims.

Affirmed.