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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0832**

Shivsaywack Singh,
Relator,

vs.

Grand Casino Hinckley,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed November 12, 2019
Affirmed
Bjorkman, Judge**

Department of Employment and Economic Development
File No. 36926905

Shivsaywack Singh, Hinckley, Minnesota (pro se relator)

Grand Casino Hinckley, Hinckley, Minnesota (respondent employer)

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

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and
Reyes, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Relator challenges an unemployment-law judge's decision that relator is ineligible for unemployment benefits because he was discharged for employment misconduct. We affirm.

FACTS

Relator Shivsawack Singh worked as a security officer for respondent Grand Casino Hinckley from February 2016 until September 18, 2018. Three incidents led to his dismissal. First, in May 2018, Grand Casino received complaints from five female employees who felt "uncomfortable" because Singh followed them, ogled them, and asked them personal questions. He commented that one employee had a "big butt" or a "nice butt" and told another employee, "You are so beautiful. You deserve the best. I'm going to get you a raise."

Second, in June, Singh told a female guest that she was "so beautiful" and "I just want to caress your body." While making these statements, he inadvertently activated the microphone on his radio, broadcasting the statements to between 15 and 17 other security officers and a dispatcher. Three days later, he told another guest and her younger sister that he could arrange for them to be hired "instantly" by Grand Casino and get raises "within an hour"; the guest complained to a supervisor. Soon after, Singh was placed on unpaid leave on an unrelated matter. He returned to work on August 16, 2018.

Third, on September 18, Singh approached a female guest, T.S., at a vending machine and said, "Hi pretty lady," and asked another female guest, J., whether the two

women were at the casino together. When J. said that they were not together, Singh asked T.S. whom she was with, and T.S. told him it was none of his business and he should be patrolling the hallways. He replied that he “just enjoys conversation with women” and followed her to her room, making her feel “scared.” When she reported the incident to her husband, he went into the hallway and told Singh to leave his wife alone. T.S. and her husband complained to Grand Casino, and Singh was dismissed later that day.

Singh applied for unemployment benefits and was deemed ineligible by respondent Minnesota Department of Employment and Economic Development (DEED) because he was discharged for misconduct. At the hearing challenging that determination, the unemployment-law judge (ULJ) received evidence, including the statements of employees and guests who complained about Singh; testimony from Grand Casino’s director of security and risk management, a security manager, and a business partner; and documents detailing Grand Casino’s policies, as well as Singh’s training and warnings regarding those policies. Singh denied the allegations of misconduct.

The ULJ found that Grand Casino discharged Singh for inappropriate conduct with employees and guests. The ULJ specifically found Singh’s testimony “not credible” because his description of the September 18 incident was less plausible and less detailed than T.S.’s statement, and because numerous complainants reported similar inappropriate behavior. And the ULJ concluded this conduct constitutes disqualifying employment misconduct.

Singh sought reconsideration. In affirming the decision, the ULJ noted that, while it was unclear whether Singh continued to deny that he committed the conduct or whether

he argued that Grand Casino failed to bring the conduct to his attention so he could correct it, in either case Singh's testimony was not credible and the record evidence established that he was repeatedly warned not to engage in this conduct.

Singh appeals by writ of certiorari.

D E C I S I O N

On review of a ULJ decision, we may reverse or modify the decision if the substantial rights of the petitioner have been prejudiced because, among other reasons, the decision is "unsupported by substantial evidence in view of the entire record as submitted" or is "arbitrary or capricious." Minn. Stat. § 268.105, subd. 7(d) (2018). An employee who is discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2018). Whether an employee committed employment misconduct is a mixed question of law and fact. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). We defer to a ULJ's credibility determinations and uphold a ULJ's findings of fact if supported by substantial evidence. *Cunningham v. Wal-Mart Assocs., Inc.*, 809 N.W.2d 231, 235 (Minn. App. 2011). And we review de novo whether the facts found by the ULJ constitute employment misconduct. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

I. Substantial evidence supports the ULJ's findings that Singh repeatedly made inappropriate comments toward employees and guests.

The ULJ found that Grand Casino terminated Singh's employment based on three incidents. As to the first incident, the ULJ's finding that Singh made inappropriate statements to five female employees in May 2018 is supported by their written complaints,

which detailed Singh's conduct and how it made them feel. Singh's signed acknowledgment in his employee file shows that he was orally warned not to engage in such conduct again. Singh's employee file also supports the ULJ's findings with respect to the second incident. He received an oral warning for commenting on a female's beauty and his desire to "caress [her] body." And Grand Casino completed an incident report documenting that Singh promised another guest that he could arrange for her and her sister to be hired "instantly." The ULJ's findings regarding the third incident—which led to his immediate dismissal—are supported by T.S.'s written statement and the testimony of Singh's supervisors and others involved in reporting the incident. Singh himself confirmed most of the details of this incident in his statements to supervisors and in his testimony before the ULJ. He admitted talking with two female guests, T.S. directing him to carry on with his patrol work, choosing to follow T.S., and receiving a complaint from T.S.'s husband. In sum, the ULJ's findings regarding Singh's statements and conduct are supported by substantial evidence.

II. Singh's actions constitutes employment misconduct.

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." Minn. Stat. § 268.095, subd. 6(a) (2018). "As a general rule, refusing to abide by an employer's reasonable policies and requests amounts to disqualifying misconduct." *Schmidgall*, 644 N.W.2d at 804.

As a security officer, Singh was expected to interact and socialize with guests to promote their having a positive experience. But Grand Casino does not condone harassment of guests or coworkers. At all relevant times, Grand Casino had a written policy that prohibits employees from “[m]aking unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature as a condition of the [employee’s] continued employment.” The policy articulates “zero tolerance” with regard to harassment. All employees participate in annual training “to clarify the harassment-free policy.” Grand Casino’s director of security and risk management testified that during training employees receive “examples of what’s good and bad communication and conversation” and are directed not to converse about a person’s appearance or gender. The director testified that calling someone a “pretty lady” is an obvious violation of the harassment policy.

Singh does not deny that Grand Casino has the right to reasonably expect employees to comply with its harassment policy. *See Stagg*, 796 N.W.2d at 316 (ruling that employer had the right to expect an employee to comply with its reasonable absenteeism policies set forth in an employment manual). And he does not dispute that violation of the policy demonstrated a substantial lack of concern for the employment. Rather, he takes issue with the ULJ’s factual determinations. He suggests that his actual conduct in each of the three incidents was innocuous and consistent with his job requirement to be friendly, his record of harassing conduct was “falsified,” and he received no warnings from Grand Casino to

change his conduct.¹ But this court does not reweigh the evidence and defers to the ULJ's credibility determinations. *See Cunningham*, 809 N.W.2d at 235.

Because the record evidence amply supports the ULJ's determination that Singh was dismissed for harassing female employees and guests, and such conduct constitutes a serious violation of Grand Casino's reasonable behavioral standards, Singh is not eligible to receive unemployment benefits.

Affirmed.

¹ Singh also delves into the circumstances of his unpaid leave, which he claims was based on false allegations of drug and alcohol use on the job. The ULJ disregarded evidence on that subject because it was not related to Singh's termination. We agree that it is not relevant.