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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2016**

Myisha Jackson,
Relator,

vs.

Senior Care Solutions, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 27, 2020
Affirmed
Bryan, Judge**

Department of Employment and Economic Development
File No. 37618745-3

Myisha Jackson, Minneapolis, Minnesota (pro se relator)

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

Senior Care Solutions, Inc., Stillwater, Minnesota (respondent employer)

Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and Bryan,
Judge.

UNPUBLISHED OPINION

BRYAN, Judge

Relator appeals an unemployment law judge's decision that relator's discharge for misconduct makes her ineligible to receive unemployment benefits. We affirm.

FACTS

From October 2017 until her discharge on September 19, 2019, relator Myisha Jackson worked for respondent Senior Care Solutions, Inc. (SCS). SCS provides nurse consultants to companies that have a temporary need for nurses. SCS's biggest contract is with Ebenezer, an operator of several senior living communities. Jackson, a licensed practical nurse (LPN), worked almost exclusively at Ebenezer's facilities. During September 2019, SCS received reports that Jackson acted unprofessionally on two separate occasions. After the second incident, SCS terminated her employment. Jackson then applied for unemployment benefits with respondent Department of Employment and Economic Development (DEED). DEED determined that Jackson was ineligible for benefits because her discharge resulted from employment misconduct. Jackson appealed that determination and an unemployment law judge (ULJ) held a hearing to review Jackson's eligibility for benefits.

At the hearing, the ULJ received evidence, including testimony from Jackson and SCS's vice president of clinical services, N.F., about the two incidents involving Jackson. The first incident occurred on September 3, 2019. The director of nursing at Ebenezer's Brooklyn Center location made N.F. aware of the problematic conduct. The director of nursing told N.F. that on that day, Jackson yelled at her in front of another co-worker, yelled at another employee, exhibited disrespect for authority, refused to follow the instructions of the director, made a second employee assist her, even though the director

had instructed that employee to shadow someone else, and generally displayed a disrespectful attitude. As a result, the director did not want Jackson at the facility anymore. N.F. discussed this matter with Jackson and documented the incident and response. N.F. testified that Jackson expressed remorse for her actions, admitted she was frustrated because the facility was short staffed, and felt like she was outgrowing her position. N.F. warned Jackson that she would be terminated if SCS received any other complaints, and Jackson said that she understood.

Jackson testified that the director's depiction of events is inaccurate and that they never had an argument or confrontation. Jackson believes that the allegations stem from the director's animosity towards Jackson because Jackson emailed the director the weekend prior about errors Jackson found at the facility. Jackson testified that she attempted to explain this to N.F., but was unable to defend herself because N.F. made it clear that SCS would side with their biggest client.

The ULJ found that a preponderance of the evidence indicates that Jackson exhibited rude or disrespectful behavior, as documented by the director's written and "detailed description of Jackson's behavior on the same day it occurred and while the events were fresh in her mind." The ULJ further concluded that "[t]he mere fact [the director] barred Jackson from returning to the Brooklyn Center facility demonstrates that Jackson's behavior was extreme." The ULJ also cited N.F.'s follow-up conversation with Jackson, in which Jackson expressed feelings of remorse and frustration, as well as her belief that she had outgrown her position. The ULJ concluded that "[s]uch feelings would explain Jackson's behavior."

The second incident occurred two weeks later on September 17, 2019. Jackson was working at a different Ebenezer location and became frustrated when another nurse, W.R., asked her about handling a particular form. W.R. testified that Jackson yelled at her to “figure it out, use [your] brain, you’re really annoying me today, I don’t need to babysit you.” Jackson recalled it differently. Jackson stated that W.R. needed her assistance so often that it interfered with Jackson’s work. Jackson said that W.R. then yelled at Jackson, not the other way around. N.F. also testified regarding the second incident. In her testimony, N.F. explained that a case worker witnessed the incident and corroborated W.R.’s testimony. Specifically, N.F. testified that the case worker reported that Jackson yelled at W.R. and that it was so bad that the case worker had to intervene to resolve the conflict. N.F. explained that she believed W.R. because she had not ever had any issues with her in the past.

The ULJ found that a preponderance of the evidence supported W.R.’s version of events. The ULJ cited Jackson’s admission that W.R.’s continual need for assistance was starting to interfere with Jackson’s work:

Plainly Jackson was getting increasingly annoyed with [W.R.] for taking up too much of her time that day. It is probable that Jackson’s irritation reached a peak when [W.R.] questioned Jackson about whether to keep a certain form. Jackson clearly believed [W.R.], an RN, should know how to determine the importance of the form herself. Thus, it is believable that Jackson patronized [W.R.].

The ULJ also noted that the case worker “intervened, apparently in an attempt to diffuse the situation.”

Based on the findings regarding the two incidents, the ULJ determined that Jackson's misconduct precluded her receipt of benefits: "Because Jackson's actions displayed clearly a serious violation of the standards of behavior SCS had the right to reasonably expect, she is ineligible for benefits." Jackson requested reconsideration and the ULJ affirmed. This certiorari appeal followed.

D E C I S I O N

Jackson challenges the ULJ's decision, arguing that the evidence does not support the ULJ's findings. Because the record contains sufficient evidence to support the ULJ's findings, we affirm the ULJ's decision.

The State of Minnesota provides workers who are unemployed through no fault of their own a temporary partial wage replacement. Minn. Stat. § 268.03 (2018). Workers discharged as a result of their own misconduct, however, cannot receive this partial wage replacement. Minn. Stat. § 268.095, subd. 4(1) (2018). The statute defines "employment misconduct" as "any intentional, negligent, or indifferent conduct, on the job or off the job that is a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee." Minn. Stat. § 268.095, subd. 6(a) (Supp. 2019). In determining eligibility for the unemployment benefits, judges must also consider whether the conduct resulted from the worker's "inability or incapacity," *id.*, subd. 6(b)(5) (2018), and whether the conduct involved "only a single incident," *id.*, subd. 6(d) (2018). On certiorari appeal from a ULJ's decision, this court may affirm or remand the case for further proceedings. Minn. Stat. § 268.105, subd. 7(d) (2018). This court may also reverse and modify the decision if it violates the constitution, exceeds the statutory authority or

jurisdiction of the department, is made upon unlawful procedure, is affected by other error of law, is unsupported by substantial evidence, or is arbitrary or capricious. *Id.*

Whether an employee committed employment misconduct presents a mixed question of law and fact. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). Whether an employee committed a particular act is a question of fact, but whether a particular act constitutes misconduct is a question of law. *Id.*; *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). We view the ULJ's findings of fact in the light most favorable to its decision, and "will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Questions of law are reviewed de novo. *E.g.*, *Abdi v. Dep't of Emp't & Econ. Dev.*, 749 N.W.2d 812, 814-15 (Minn. App. 2008).

"Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Bangtson v. Allina Med. Grp.*, 766 N.W.2d 328, 332 (Minn. App. 2009) (quotation omitted). "When assessing witness credibility, the ULJ may consider all relevant factors, including, but not limited to, the witness's interest in the case's outcome, the source of the witness's information, the witness's demeanor and experience, and the reasonableness of the witness's testimony." *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 29 (Minn. App. 2007). The ULJ may also take into account whether a witness's testimony is "reasonable compared with other evidence" and "corroborated by other testimony and evidence." *Ywsyf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 532-33 (Minn. App. 2007). "When the credibility of a witness testifying in a hearing has

a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1a(a) (2018). We will uphold this determination “if supported by substantial evidence.” *Wichmann*, 729 N.W.2d at 29.

In this case, Jackson does not raise a legal issue for us to review de novo. Instead, Jackson argues that the ULJ made incorrect factual findings about what happened during each of the two incidents in question. We do not accept Jackson’s position and affirm the ULJ’s decision because it is supported by substantial evidence. Regarding the first incident, the ULJ found that a preponderance of the evidence indicates Jackson exhibited rude or disrespectful behavior. The ULJ did not err in this regard. The director wrote a detailed description of Jackson’s behavior while the events were fresh in her mind. In addition, the director took the unusual step of barring Jackson from returning to the Brooklyn Center facility. N.F.’s testimony concerning her conversation with Jackson and Jackson’s own expression of remorse and frustration further support the director’s description of events. On this record, we are satisfied that substantial evidence supports the ULJ’s determination that Jackson displayed “rude and disrespectful behavior.”

As to the second incident, the ULJ found that a preponderance of the evidence supported W.R.’s version of events. The ULJ explained that it credited W.R.’s version over Jackson’s. Again, we conclude that the ULJ did not err. Jackson’s statement that W.R.’s continual need for assistance was interfering with Jackson’s work is consistent with W.R.’s recollection of the dispute. In addition, N.F.’s testimony regarding the case worker conflicted with Jackson’s testimony that W.R. yelled at Jackson, not the other way around.

The record, therefore, supports the ULJ's determination that "Jackson's actions displayed clearly a serious violation of the standards of behavior SCS had the right to reasonably expect." Because the record supports the ULJ's findings, we affirm the denial of Jackson's application for unemployment benefits.

Affirmed.