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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0670**

Craig Hanson,
Relator,

vs.

Autism Opportunities Foundation,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed March 1, 2021
Affirmed
Slieter, Judge**

Department of Employment and Economic Development
File No. 37622981-3

Craig Hanson, Bloomington, Minnesota (*pro se* relator)

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

Autism Opportunities Foundation, St Louis, Missouri (respondent employer)

Considered and decided by Slieter, Presiding Judge; Jesson, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Relator challenges an unemployment-law judge's (ULJ) determination that he is ineligible for unemployment benefits because he was discharged for employment misconduct. Relator argues that his conduct did not constitute misconduct. Because the ULJ's conclusion that the relator was discharged following his use of an unauthorized and pain-causing hold was supported by the record and the record was adequately developed, we affirm.

FACTS

In March 2018, relator Craig Hanson began working as a behavior therapist with respondent Autism Opportunities Foundation, d/b/a Minnesota Autism Center (MAC), an organization that provides services to individuals with autism. Hanson was discharged from employment in 2019 following an incident at work during which he restrained a client, resulting in injuries to the client's right inner arm, right elbow, right knee, and left shoulder blade.

MAC discharged Hanson from employment on the ground that he restrained the client using an unauthorized hold. Hanson applied for and was denied unemployment benefits by respondent Department of Employment and Economic Development (DEED). Hanson challenged this determination and requested a hearing before a ULJ.

A ULJ heard testimony from Hanson and MAC's human-resources manager and received exhibits, including an incident report and statements from two witnesses of the incident. The ULJ issued written findings of fact affirming DEED's determination that

Hanson was ineligible for benefits. Hanson filed a request for reconsideration, and the ULJ affirmed its decision. This certiorari appeal follows.

DECISION

Hanson argues the ULJ erred in concluding that his actions constituted employment misconduct and aggravated employment misconduct. He also argues the ULJ failed to develop the record by denying subpoena requests he made at the hearing. As explained below, we disagree with each assertion. Therefore, we affirm.

I. The ULJ did not err in concluding Hanson committed employment misconduct and aggravated employment misconduct.

When reviewing a ULJ’s unemployment-benefits decision, our court may affirm or remand for further proceedings, or we may reverse or modify the decision if it is “unsupported by substantial evidence in view of the hearing record as submitted.” Minn. Stat. § 268.105, subd. 7(d) (2018). “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). “Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law.” *Stagg v. Vintage Place, Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted). The employee’s involvement in the act is a question of fact, *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006), and factual findings are reviewed “in the light most favorable to the decision and should not [be disturbed] as long as there is evidence in the record that reasonably tends to sustain them,” *Stagg*, 796 N.W.2d at 315

(quotation omitted). But, “whether [the] particular act constitutes disqualifying misconduct is a question of law that [appellate courts] review de novo.” *See id.*

Unemployment benefits are intended to provide financial assistance to employees who have been discharged from employment “through no fault of their own.” *Id.* (quotation omitted). A worker who is discharged from employment for “employment misconduct” or “aggravated employment misconduct” is ineligible to receive such benefits. Minn. Stat. § 268.095, subd. 4(1)-(2) (2018).

The ULJ concluded that Hanson was discharged for two forms of misconduct, and we review each form below.

A. Employment Misconduct

Employment misconduct is defined 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.” *Id.*, subd. 6. Hanson argues the record is insufficient to conclude that he committed employment misconduct. We disagree.

MAC’s human-resources manager testified that Hanson was not authorized to perform any type of hold on clients because “he had not passed the Safety Care training.”¹ She indicated that instead of performing a hold, Hanson should have called for assistance in managing the client. She further testified that no instance exists in which a one-person

¹ Though not defined or described in detail in the record, we discern that this is a class in which employees learn procedures for handling clients, and that employees may become certified through the course to perform various types of “holds” or restraining techniques.

hold like the one Hanson performed is appropriate. She also indicated a behavior therapist was in the room with Hanson at the time of the incident and that Hanson could have called for her to assist him. The behavior therapist confirmed in a written statement that she saw Hanson on the floor with the client after the client threw a yoga ball at someone.

A program coordinator was across the hallway at the time of the incident. The program coordinator explained in a witness statement that she first heard the client “crying” from across the hall and then saw Hanson restraining the client in a “one-person hold that was not safety care approved.” She heard the client say “Stop, ow” as Hanson was getting off him after performing the hold. Following her examination of the client soon afterwards, the program coordinator noticed “abrasions on [the client’s] right inner arm, right elbow, right knee, and left shoulder blade” and submitted a corresponding injury report.

Hanson testified on his own behalf. When the ULJ asked Hanson if he was authorized to do “any type of hold” on “any” client, he did not answer directly and stated that he took a “safety care” class twice but received only one certificate of completion. His testimony suggests he was not allowed to perform holds after completing the first class.² After taking the course “the second time,” he stated he passed “everything except for . . . the floor drop transition.” Hanson acknowledged that MAC “didn’t feel [he] was qualified [to put holds on clients]” and had previously told him so. He indicated he was instructed

² He testified: “You know, the certificate they presented me with was the first safety care course that I took, and I was having problems with my lower back and hip at that point. And so, I was doing everything right, but when you’re retreating away from the client you weren’t supposed to put your hands on the ground or to push off the, a client. Quite frankly, I’m 59 years old and overweight and, you know, it was very difficult for me physically to, to duplicate that at that point and time.”

by MAC to “move tables and chairs” out of the way in situations with difficult clients, but that he decided to perform a hold here because the situation was “extremely dangerous” and “unusual,” and that performing a hold was in the interest of safety.

Hanson acknowledged that he never called for assistance and that the client suffered injuries from Hanson’s conduct. He also testified that he “did not violate the company policy” and that he “made an attempt to use the proper hold” on the client.

Taken together, the testimony and record contain substantial evidence of employment misconduct. 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). Both the human-resources manager and program coordinator stated that Hanson performed an unauthorized hold in violation of MAC policy and contrary to what he was expected to do in this situation. Hanson provided no evidence to suggest he was authorized to perform the hold. The record also contains an email from the director of MAC which indicates that Hanson “[was] not certified to do any holds.”

Hanson argues in his brief that he was “confused” by the ULJ’s question about whether he was authorized to perform holds and that he gave a “complex and nebulous” answer in an attempt to be truthful. However, the record reflects that the ULJ’s questioning was straightforward. The ULJ allowed Hanson to present evidence, call witnesses, present testimony, and make a closing statement. The ULJ’s understanding of the case was not

limited to Hanson's responses to the ULJ's questions, and the ULJ did not limit Hanson's own testimony in any way.

Hanson argues that even if his conduct was "employment misconduct," three exceptions apply: (1) that he acted as a reasonable employee would in the situation; (2) that his conduct was a consequence of his inability or incapacity; or (3) that he made a good faith error in judgment. *See* Minn. Stat. § 268.095, subd. 6(b)(4)-(6). Each argument is addressed below.

1. Reasonable Employee

Conduct consistent with what an average, reasonable employee would have engaged in under the circumstances is not employment misconduct. *Id.*, subd. 6(b)(4). Hanson argues he acted as an "average employee" would have under the circumstances. However, the record shows he violated MAC's safety rules, which MAC had a right to reasonably expect its employees to follow. *See Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002) ("As a general rule, refusing to abide by an employer's reasonable policies and requests amounts to disqualifying misconduct."). This exception is therefore inapplicable because a reasonable person does not engage in activity that violates an employer's safety rules.

2. Inability or Incapacity

Conduct that "was a consequence of the applicant's inability or incapacity" is also exempted. Minn. Stat. § 268.095, subd. 6(b)(5). Hanson seems to argue that his age and health rendered it difficult for him to safely perform the hold or extract himself from the client after performing the hold. Hanson did not decide to perform the hold because of his

alleged inability or incapacity. Instead, the issue in this case is whether he departed from MAC's policy that he not perform the hold and, instead, call for assistance. Therefore, this exception does not apply.

3. Good Faith Error in Judgment

Finally, if the behavior resulted from "good faith errors in judgment if judgment was required" it is not misconduct. *Id.*, subd. 6(b)(6). Hanson argues he performed the hold in good faith for safety reasons and that he was permitted to exercise "clinical judgment" in restraining the client. Hanson was not required to make any judgment and instead was to call for assistance, thus making this exception inapplicable. *See Potter v. Northern Empire Pizza, Inc.*, 805 N.W.2d 872, 877 (Minn. App. 2011) (stating that once an employer has implemented a policy, employee's duty is to follow that policy with no discretion to choose otherwise).

In summary, substantial evidence exists to support the ULJ's conclusion that Hanson's conduct was employment misconduct, and no exception applies.

B. Aggravated Employment Misconduct

Hanson also implicitly argues that the ULJ erred in deeming his conduct "aggravated employment misconduct" by suggesting that his behavior was an "accident" that falls outside of the scope of the aggravated-employment-misconduct statute.

Minnesota Statutes section 268.095, subdivision 6a(b) describes two types of aggravated employment misconduct. The type relevant here states that "an act of patient or resident abuse" by an employee of a facility as defined by section 626.5572 is

misconduct.³ “Abuse” is defined as “[c]onduct which is not an accident or therapeutic conduct as defined in section [626.5572], which produces or could reasonably be expected to produce physical pain or injury or emotional distress including, but not limited to . . . hitting, slapping, kicking, pinching, biting, or corporal punishment of a vulnerable adult.” Minn. Stat. § 626.5572, subd. 2(b)(1) (2020).

Substantial record evidence exists to show that Hanson intentionally used physical force to restrain the client, who was a patient or resident of MAC, which could be expected to produce physical pain or emotional distress. Following the hold, the client cried in pain and exhibited several physical injuries. The conduct was also not accidental, as Hanson suggests. An “accident” is defined as:

a sudden, unforeseen, and unexpected occurrence or event which: (1) is not likely to occur and which could not have been prevented by exercise of due care; and (2) if occurring while a vulnerable adult is receiving services from a facility, happens when the facility and the employee or person providing services in the facility are in compliance with the laws and rules relevant to the occurrence or event.

Minn. Stat. § 626.5572, subd. 3 (2020). The injuries could have been prevented through exercise of due care—i.e. calling for help—and the record shows that Hanson was not acting in compliance with MAC’s rules in performing the hold.

In summary, the record supports a conclusion that Hanson was also discharged for aggravated employment misconduct.

³ Hanson is an employee of a “facility” as defined by Minn. Stat. § 626.5572, subd. 6 (2020).

II. The ULJ did not err in denying Hanson's subpoena requests.

Hanson also argues that the ULJ should have granted his subpoena requests and therefore failed to develop the record. The ULJ “may issue subpoenas to compel the attendance of witnesses, the production of documents or other exhibits, upon a showing of necessity by the requesting party.” Minn. R. 3310.2914, subd. 1 (2019). The ULJ may deny subpoena requests if the information sought “would be irrelevant, immaterial, or unduly cumulative or repetitious.” *Id.* We review subpoena decisions for an abuse of discretion. *Icenhower v. Total Automotive, Inc.*, 845 N.W.2d 849, 853-54 (Minn. App. 2014), *review denied* (Minn. Jul. 15, 2014).

Hanson requested subpoenas for information from his MAC employment file and his MAC email account. At the beginning of the hearing the ULJ addressed and denied these requests on the ground that the information was unlikely to be relevant but left open the possibility of granting the subpoena later based on the testimony at the hearing.

Hanson also asked to subpoena testimony from the behavior therapist, the program coordinator, and a teacher who offered to testify that Hanson had performed the hold on the client in the past and that he used “the approved hold” in this situation. The ULJ denied the requests but also stated she would consider the requests again later in the hearing.

Hanson argues this was an abuse of the ULJ's discretion because the information and testimony would have shown he was authorized to perform the holds, followed MAC policies “to the best of [his] ability,” and was a person of good character. The behavior therapist and the program coordinator each provided witness statements. The program coordinator indicated in her statement that she believed Hanson was unauthorized to

perform the hold, and information from the other witnesses is information that Hanson himself could have provided through his own testimony. The ULJ is permitted to deny this “irrelevant, immaterial, or unduly cumulative or repetitious” evidence. Minn. R. 3310.2914, subd. 1.

Second, the ULJ gave Hanson an opportunity to testify about his own employment record and, based on his testimony, it was reasonable for the ULJ to assume that any further employment records would not have established that he was authorized to perform holds.

Hanson also argues the ULJ failed to sufficiently develop the record by “not clarifying [his] testimony so that other details of the case could come to light.” We assume Hanson is referring to the ULJ’s obligation to “ensure that all relevant facts are clearly and fully developed.” Minn. R. 3310.2921 (2019); *Icenhower*, 845 N.W.2d at 853. The testimony shows the ULJ asked several clear questions to Hanson about his conduct, including a direct question of whether he was certified to perform any holds. The ULJ also allowed Hanson to cross-examine the other party’s witness and offer and object to exhibits. The ULJ allowed both parties to submit a closing statement and make subpoena requests on the record. The ULJ does have a duty to develop the record, but there is nothing to indicate that the ULJ did not ask the necessary questions or allow the parties ample opportunity to develop the record in this case.

Affirmed.