

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0851**

Dantzler Thomas,
Relator,

vs.

Thermotech LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 10, 2021
Affirmed
Johnson, Judge**

Department of Employment and Economic Development
File No. 37700989-3

Dantzler Thomas, Minneapolis, Minnesota (*pro se* relator)

Thermotech L.L.C., Hopkins, Minnesota (respondent employer)

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

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Slieter,
Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Dantzler Thomas was fired from his job because he repeatedly harassed a co-
worker. He applied for unemployment benefits. The department of employment and

economic development determined that he is ineligible because he was discharged for employment misconduct. We affirm.

FACTS

Thermotech L.L.C. is engaged in the business of custom precision injection molding. In May 2017, Thermotech hired Thomas to work as a machine operator. In August 2019, Thomas's supervisor received a report that Thomas had harassed a female co-worker. The co-worker reported that Thomas said things to her such as "I will get you," "no woman can reject me," "I have a dick that everyone wants," "you are nobody until I am done with you," "your man will never know what I will do to you until I get my hands on you," and "you know you want this" as he gestured toward his genitals. The co-worker said that Thomas had engaged in such harassment on almost a daily basis. Thomas's supervisor met with Thomas, explained the company's expectations for appropriate workplace behavior, and informed him that harassment would not be tolerated. In September 2019, the co-worker again reported that Thomas was making inappropriate comments to her. Thomas's supervisor again met with him, explained the importance of a respectful workplace, and informed him that harassment was unacceptable.

In October 2019, Thomas yet again made inappropriate comments to the co-worker, which caused her to miss one day of work because she was upset. The company's human-resources manager met with Thomas to gather information from him. Thomas did not fully cooperate. The human-resources manager learned that six other employees had witnessed Thomas's conduct toward the co-worker and had told him to stop. Thermotech terminated Thomas's employment.

In November 2019, Thomas applied for unemployment benefits. Based on the information Thomas provided with his application, the department made an initial determination that he is eligible for unemployment benefits. Thermotech filed an administrative appeal and argued that Thomas should be ineligible because he engaged in employment misconduct. An unemployment-law judge (ULJ) conducted a hearing by telephone in January and March of 2020. Thermotech's human-resources manager testified on behalf of the company; Thomas testified on his own behalf. After the hearing, the ULJ issued a written decision in which he determined that Thomas had engaged in employment misconduct and is ineligible for unemployment benefits. Thomas requested reconsideration, but the ULJ denied the request and affirmed his prior ruling. Thomas now appeals by way of a petition for a writ of certiorari.

DECISION

Thomas argues that the ULJ erred by concluding that he is ineligible for unemployment benefits based on a finding of employment misconduct.

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 (1) (2020); *Stagg*, 796 N.W.2d at 314. "Employment misconduct" is defined by statute to mean "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 an

employee.” Minn. Stat. § 268.095, subd. 6(a) (2020). The statutory definition of misconduct is exclusive such that “no other definition applies” to an application for unemployment benefits. *Id.*, subd. 6(e) (2020); *see also Wilson v. Mortgage Resource Ctr., Inc.*, 888 N.W.2d 452, 458-59 (Minn. 2016). Generally, “refusing to abide by an employer’s reasonable policies and requests amounts to disqualifying misconduct.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). More specifically, violating an employer’s anti-harassment policy is a form of employment misconduct. *Redalen v. Farm Bureau Life Ins. Co.*, 504 N.W.2d 237, 238 (Minn. App. 1993).

In an evidentiary hearing before a ULJ, neither party bears a burden of proof. Minn. Stat. § 268.069, subd. 2 (2020); *Wilson*, 888 N.W.2d at 461. We review a ULJ’s findings of fact “in the light most favorable to the decision” to determine whether “there is evidence in the record that reasonably tends to sustain them.” *Stagg*, 796 N.W.2d at 315 (quotation omitted). “Whether the employee committed a particular act is a question of fact.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

In his one-page *pro se* brief, Thomas asserts that he “never harassed” the female co-worker. In light of Thomas’s contention, the question on appeal is whether there is evidence in the record to support the ULJ’s finding that Thomas engaged in employment misconduct by violating Thermotech’s anti-harassment policy. *See* Minn. Stat. § 268.105, subd. 7(d) (5) (2020). Thermotech’s policy prohibits harassment, including “offensive language, jokes, or other verbal, graphic or physical conduct relating to an associate’s . . . sex, . . . which would make a reasonable person experiencing such harassment uncomfortable in the work environment or interfere with the person’s job performance.”

There is abundant evidence supporting the ULJ's findings that Thomas made inappropriate comments to a co-worker, some of which were sexual in nature. Thermotech's human-resources manager testified that the co-worker informed her that Thomas was making her uncomfortable such that she did not want to go to work, that six other employees corroborated the co-worker's complaints, that Thomas had twice been warned about his conduct, and that Thomas's conduct violated Thermotech's anti-harassment policy. The human-resources manager introduced her notes into evidence, the notes of Thomas's supervisor, and Thermotech's anti-harassment policy.

Thus, the ULJ did not err by finding that Thomas engaged in employment misconduct and by concluding that he is ineligible for unemployment benefits.

Affirmed.

A handwritten signature in cursive script, appearing to read "Matthew J. Johnson".