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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0887**

Barbara DeVora,
Relator,

vs.

City of St. Paul,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 26, 2021
Affirmed
Ross, Judge**

Department of Employment and Economic Development
File No. 37677668-4

Barbara DeVora, Vadnais Heights, Minnesota (relator pro se)

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

City of St. Paul, St. Paul, Minnesota (respondent employer)

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Barbara DeVora unsuccessfully sought unemployment benefits after the City of St. Paul terminated her employment. An unemployment-law judge found that the Minnesota

Department of Employment and Economic Development correctly determined that she was ineligible because the city discharged her for employment misconduct. We affirm that decision in this certiorari appeal because substantial evidence and an adequately developed record support it.

FACTS

The City of St. Paul employed Barbara DeVora as a workers' compensation claims processor beginning in 2014, and it terminated her employment in 2019. The Minnesota Department of Employment and Economic Development denied DeVora's request for unemployment benefits after her discharge. DeVora challenged that decision. An unemployment-law judge (ULJ) held a hearing and made factual findings, which we summarize here.

From 2017 to 2019, various incidents precipitated the city's decision to discipline DeVora. The city investigated her supervisor's conduct and ordered DeVora not to discuss the investigation with anyone. DeVora discussed her supervisor's conduct with a coworker. DeVora engaged in a shouting episode with a coworker. And in September 2019, DeVora found and snooped through a personal journal belonging to a coworker, photocopying portions of it. The city discharged DeVora the next month, citing her specific behaviors as violations of its Workplace Conduct Policy and Civil Service Rules.

The ULJ found that, although "the record supports [DeVora's assertion that she] was treated rudely and unprofessionally by her supervisor and several coworkers, she also engaged in conduct that was . . . unprofessional and unreasonable." The ULJ concluded that DeVora's conduct constituted employment misconduct and that the city discharged

her because of it. DeVora asked the ULJ to reconsider, and the ULJ affirmed. DeVora appeals by certiorari.

DECISION

DeVora argues that the ULJ lacked an evidentiary basis to find that she committed employment misconduct. A person fired for employment misconduct is not eligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4 (2020). “Employment misconduct means 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(a) (2020). Whether an employee committed a particular act is a question of fact, and whether the act constitutes employment misconduct is a question of law. *Icenhower v. Total Auto., Inc.*, 845 N.W.2d 849, 855 (Minn. App. 2014), *review denied* (Minn. July 15, 2014). We construe the ULJ’s factual findings in a light favorable to his decision. *Id.* We will affirm a ULJ’s conclusion that an employer terminated the employee for misconduct unless his findings, inferences, conclusion, or decision is not supported by substantial evidence in the full record. Minn. Stat. § 268.105, subd. 7(d)(5) (2020).

In that framework, we affirm the ULJ’s findings. Although the evidence conflicted in some respects, the ULJ heard testimony that DeVora engaged in a shouting match with her coworker, discussed an ongoing investigation after being told not to, and read and copied a coworker’s private journal without justification or permission. The ULJ based the findings on his examination of the city’s applicable policies, correspondence between the

city and DeVora, and testimony from DeVora, former coworkers, and the city's representative. We conclude that substantial evidence supports the ULJ's findings.

DeVora counters by contending that her actions did not constitute employment misconduct because she did not act intentionally, negligently, or indifferently towards the city's workplace expectations, citing Minnesota Statutes section 268.095, subdivision 6(a). The contention fails. Failure to comply with reasonable workplace expectations is generally employment misconduct. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). And her intentional behavior of reading and copying the private journal, shouting at her coworker, and discussing an ongoing investigation all violate reasonable expectations about which DeVora was aware. Each episode constitutes misconduct.

DeVora would have us conclude otherwise, arguing both that her alleged misconduct was reasonable conduct in light of her anxiety and depression and that the city's real reason for terminating her was unlawful retaliation. Neither argument is convincing. It is true that employment misconduct excludes "conduct that was a consequence of the applicant's mental illness or impairment" and "conduct an average reasonable employee would have engaged in under the circumstances." Minn. Stat. § 268.095, subd. 6(b)(1), (4) (2020). But DeVora points to nothing in the record that would have required the ULJ to link her three acts of workplace misbehavior to asserted mental-health issues. And although an employee is eligible to receive unemployment benefits if her employer discharged her for a discriminatory reason, *see* Minn. Stat. § 268.095, subds. 4, 6 (2020), DeVora likewise points to nothing in the record to compel the conclusion that the city acted to retaliate rather than to address misconduct.

We similarly are not persuaded by DeVora's administrative, due-process argument that the ULJ failed to assist her during the proceeding. A ULJ must reasonably assist parties to present evidence and develop the record. Minn. R. 3310.2921 (2019). Before the hearing, the ULJ outlined DeVora's right to call witnesses and question them, and he discussed each witness DeVora wished to call and what information they may provide. And during the hearing, the ULJ gave DeVora the opportunity to question each witness. The ULJ questioned DeVora and her witnesses about her supervisor and coworkers mistreating her, why they targeted DeVora, and whether they participated in the decision to discharge her. The ULJ also questioned the city's representative about the city's reasons for firing DeVora, reviewing each incident and why the city found it problematic. The ULJ is a neutral arbiter of facts, not a partisan to act as either party's counsel. The record satisfies us that the ULJ met his regulatory duty to assist the parties.

DeVora raises other arguments, but they are either indirectly defeated by our analysis of the other issues or are unrelated to any alleged errors in the ULJ's decision.

Affirmed.