

*This opinion is nonprecedential except as provided by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
A20-1507**

Stacy Adamsheck,
Relator,

vs.

Kelley Fuels, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 26, 2021
Affirmed
Frisch, Judge**

Department of Employment and Economic Development
File No. 42365733-2

Howard L. Bolter, Bolter Law, LLC, Minneapolis, Minnesota (for relator)

Kelley Fuels, Inc., Shakopee, Minnesota (respondent employer)

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

Considered and decided by Frisch, Presiding Judge; Ross, Judge; and Cochran,
Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Relator challenges the determination by an unemployment-law judge (ULJ) that she is ineligible for unemployment benefits because she was discharged for employment misconduct. We affirm.

FACTS

Relator Stacy Adamscheck was employed full-time by Respondent Kelley Fuels, Inc., co-owned by Daniel Kelley and Valerie Amsden. On Thursday, March 19, 2020, Kelley Fuels announced the temporary reduction of hours of multiple employees, including Adamscheck, due to the COVID-19 pandemic. The events relevant to Adamscheck's discharge from employment occurred in the three days after the announcement.

Employment Misconduct

The following events occurred on Friday. Adamscheck did not raise any concerns to Kelley while they were both in the office. At approximately 7:50 p.m., Adamscheck sent a text message to Amsden, her direct supervisor, complaining that another employee received pay during a two-week quarantine while Adamscheck was “basically tak[ing] a week pay per month [cut]. Not fair!” Amsden also received text notifications that Adamscheck “loved” and then “questioned” her own text message. Approximately 35 minutes later, Adamscheck sent the same text message to Kelley. Kelley called Adamscheck on the phone to discuss her concerns and informed her that he did not appreciate the late night text message. At 8:44 p.m., Amsden responded to Adamscheck's text message as follows:

This is something that either [Kelley] or I are more than willing to discuss with you on Monday. By text is not appropriate, and there is more to the situation that [sic] what you are hearing. I would very much appreciate if you would not make assumptions or jump to conclusions. The goal right now is to protect jobs, AND to keep everyone safe. Thank you.

At 9:26 p.m., Amsden received the following text message from Adamsheck's phone: "Yet Megan and [sic] Get pay cuts." At 9:37 p.m., Amsden received another text message from Adamsheck's phone: "It averages a full week every month and I already took \$1.50 an hour cut when [sic] started."

The following events occurred on Saturday. At 6:17 p.m., Adamsheck sent Amsden another text message, which opened with "I know I am not your favorite person right now," and asked for the COVID-19 test results of a coworker. Thereafter, the following text-message exchange took place:

6:36 p.m.

AMSDEN: As soon as we know, we will let you know.

6:37 p.m.

ADAMSHECK: Bullshit

AMSDEN: Excuse me?

ADAMSHECK: She did not even respond to me

AMSDEN: Who did not respond to you?

6:38 p.m.

ADAMSHECK: [Amsden]

AMSDEN: You are texting me right now. I was eating dinner. We have not heard, and I am really not appreciating the way you are texting me. At all.

6:39 p.m.

ADAMSHECK: [Amsden] we need to know what is going on

6:40 p.m.

AMSDEN: [Adamsheck], we have not received any updates yet. Once we know, we will communicate.

6:43 p.m.

ADAMSHECK: I need a sick day Monday as I can not [sic] deal with all of this

At 7:20 p.m., Amsden called Adamsheck and received no answer. About one minute later, Adamsheck returned Amsden's call, and Amsden reiterated that the text messages from Adamsheck were inappropriate and that Kelley Fuels would communicate the coworker's test results once they had them, as she had previously explained to Adamsheck. At 7:38 p.m., Adamsheck's husband sent the following email to Kelley: "Listening to my wife [Adamsheck] and her conversation is boarding [sic] comical. She is done with [Amsden] who is someone that everyone I know says is a miserable person. Know your business in side [sic] and out look me up. Leave [Adamsheck] alone." At 8:01 p.m., Amsden received a phone call from Adamsheck's phone, during which Amsden heard several seconds of silence before the call disconnected.

The following events occurred on Sunday. In the morning, Kelley left Adamsheck a voicemail stating that he understood the March 21 email to be her resignation. Adamsheck called Kelley later in the day and explained that her husband had sent the email without her knowledge or consent and that she wanted to continue her employment with Kelley Fuels. Kelley then informed Adamsheck that she was being discharged due to her behavior over the weekend. Later that evening, Adamsheck sent the following text message to Amsden: "Not that it matters at this point but I would never send the last few texts. I respect you and your family and would never disrespect like that!"

Denial of Unemployment Benefits

Adamsheck thereafter applied for unemployment benefits. On May 6, respondent Minnesota Department of Employment and Economic Development (DEED) issued a determination that Adamsheck was ineligible for unemployment benefits because she was discharged for employment misconduct. Adamsheck appealed, and a ULJ conducted a hearing, during which Adamsheck, Adamsheck's husband, Kelley, and Amsden testified.

Kelley testified that he was caught off guard by Adamsheck's first text on Friday given that she did not raise any concerns while she was in the office earlier that day. When Kelly received the message, he immediately called Adamsheck and noted that Adamsheck seemed to be under the influence of alcohol or drugs because "she was slurring her words" and was "very, very emotional." Kelley told Adamsheck that he "didn't appreciate the late night texts and that if she did need [sic] something to say that she should call." Kelley reiterated that text messages and emails were not the appropriate method to address employment issues.

Kelley testified that he initially believed the email sent from Adamsheck's husband was intended to communicate Adamsheck's resignation. But after learning that Adamsheck was unaware of her husband's email, Kelley still believed the employment relationship needed to end due to Adamsheck's "misconduct and disrespect[]" over the weekend. Kelley testified that he believed that all of the text messages came from Adamsheck directly because her quick responses to his and Amsden's phone calls made it seem "that she had control of her phone." He stated that conversations with Adamsheck by phone and text message over the weekend, along with the email received from her

husband, “resulted in the decision to terminate [her] employment.” Kelley also testified that “[t]he disrespect shown and alarming words and tones of these communications as well as the time chosen to send them were cause enough to involve the local police department.”

Amsden testified that she called Adamsheck on Saturday and reiterated that the text messages were not appropriate and needed to stop. During that call, Amsden noted Adamsheck was “slurring her words.” Amsden testified that she had “no reason to think [Adamsheck] didn’t send the text messages” because they came from Adamsheck’s phone, Adamsheck later called her from that same phone, and when Amsden mentioned the text messages and asked Adamsheck to stop texting her, Adamsheck never questioned what messages were sent or denied sending those messages. Amsden also testified that she believed Adamsheck sent the Saturday night text messages because Adamsheck admitted to receiving Amsden’s 6:36 p.m. response, and although the phone record shows the delivery of the text message, “Bullshit” a minute later, Amsden testified that the response “was immediate.”

Adamsheck testified that she did not recall that Kelley had asked her to stop texting him during their Friday night phone call, but stated that she “did not have any further communications with him after that.” She also stated that her voice was “shaky” because she was emotional due to her husband “getting involved.” Adamsheck admitted to sending the initial text messages to Kelley and Amsden complaining about her reduction in hours, but she claimed that her husband sent the other Friday night text messages without her knowledge or consent. Adamsheck also admitted to sending a text message to Amsden on

Saturday night requesting an update on her coworker's COVID-19 test results, but she claimed that once she saw Amsden's response she sent no further text messages. Adamsheck testified that the text messages sent thereafter came from her husband and that she did not know he had sent them until she received Kelley's voicemail on Sunday. Adamsheck admitted that Amsden told her on Saturday that the text messages needed to stop, but testified that she "thought that [Amsden] was speaking about the earlier ones . . . questioning whether or not they had gotten test results back" for her coworker.

Adamsheck's husband testified that he used Adamsheck's phone to send text messages to Amsden on Saturday night when he was intoxicated and that Adamsheck was "probably not" aware he was using her cell phone. Adamsheck's husband later testified that he sent the email to Kelley and was "probably not" under the influence of drugs or alcohol when any of these events occurred.

The ULJ issued her findings of fact and a decision, concluding that Adamsheck was terminated for employment misconduct and was therefore not eligible for unemployment benefits. The ULJ found "the employer's witnesses' testimony regarding the events leading to Adamsheck's discharge more credible because it was more straightforward and direct, and because it described the more likely series of the events." The ULJ detailed her reasons for her credibility determinations as follows:

Although Adamsheck denied that Kelley told her to stop texting on the evening of March, 20, 2020, the unemployment law judge found it highly unlikely that Kelley would lie about telling Adamsheck to stop texting and much more likely that Kelley gave this instruction to Adamsheck. Furthermore, the unemployment law judge found it more likely that Stacy Adamsheck, rather than [her husband], sent the series of text

messages to Amsden on March 21, 2020, as the text messages were written from her perspective, not someone else's. Adamsheck also may not have realized that she included Amsden on the text messages that she sent to [another coworker], but they ultimately would not have made sense if they were written by [Adamsheck's husband]. When [Adamsheck's husband] emailed Kelley, he chose to identify himself as Adamsheck's husband, rather than pretending to be Adamsheck. Adamsheck also did not deny sending the texts to Amsden when Amsden spoke to her on the phone that evening and told her that her text messages were inappropriate. Additionally, the unemployment law judge finds it more likely that Adamsheck was slurring her words, as the employer's witnesses claimed, due to being intoxicated, and less likely that her voice sounded different due to her simply being upset. The content of Adamsheck's text messages was also, at times, somewhat bizarre, for example, when she both "loved" and "questioned" her own text message.

Adamsheck filed a request for reconsideration. On November 23, the ULJ affirmed and issued an order, finding that "the unemployment law judge . . . thoroughly explained why she found the employer's witnesses' testimony more credible than Adamsheck's" and concluding that the ULJ's "findings of fact and decision [were] supported by a preponderance of the evidence in the record." This appeal follows.

DECISION

Adamsheck argues that the ULJ erred in finding that Adamsheck, not her husband, sent the objectionable text messages. We may reverse or modify a ULJ's determination if "the findings, inferences, conclusion, or decision are . . . unsupported by substantial evidence in view of the hearing record as submitted." Minn. Stat. § 268.105, subd. 7(d)(5) (2020). "Substantial evidence" is defined as "such relevant evidence as a *reasonable* mind might accept as adequate to support a conclusion." *Gonzalez Diaz v. Three Rivers Cmty.*

Action, Inc., 917 N.W.2d 813, 816 n.4 (Minn. App. 2018). “[W]e review the ULJ’s findings of fact in the light most favorable to the decision and will not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them.” *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016) (quotations omitted). We will affirm such findings if “supported by substantial evidence” and if “the statutorily required reason for [the ULJ’s] credibility determination” is provided. *Ywsyf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007) (setting forth factors to consider in making credibility determinations, such as “Is the testimony reasonable compared with other evidence?”). We “also give[] deference to the credibility determinations made by the ULJ.” *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008).

The ULJ’s finding that Adamsheck continued to directly send text messages to her employer after being instructed not to do so supports the conclusion that Adamsheck committed employment misconduct.¹ This finding is based on substantial evidence in the record. The ULJ specifically found “the employer’s witnesses’ testimony regarding the events leading to Adamsheck’s discharge more credible because it was more straightforward and direct, and because it described the more likely series of the events.” The ULJ found it more likely that the text messages were authored by Adamsheck because, unlike the email sent by Adamsheck’s husband, “the text messages were written from her perspective,” and Adamsheck “did not deny sending the texts to Amsden” when they spoke

¹ Adamsheck does not contest the ULJ’s finding that the delivery of the text messages, if sent by her, amounted to employment misconduct.

on the phone about the text messages. The ULJ also found “it more likely that Adamsheck was slurring her words, as the employer’s witnesses claimed, due to being intoxicated, and less likely that her voice sounded different due to her simply being upset” because “[t]he content of Adamsheck’s text messages was also, at times, somewhat bizarre, for example when she both ‘loved’ and ‘questioned’ her own text message.”

Adamsheck argues that the ULJ erred in finding that she committed misconduct because she “did not control, nor did she engage in, the misconduct which triggered her termination” and contends that she “did not send the offensive texts which contained swearing.” In other words, Adamsheck argues that the ULJ should have credited her testimony and not the testimony of her employer. But at oral argument, counsel for Adamsheck conceded that evidence in the record did in fact support the ULJ’s credibility determination. And we cannot conclude that the ULJ’s determination that the text messages originated with Adamsheck is “unsupported by substantial evidence.” *See* Minn. Stat. § 268.105, subd. 7(d)(5). The ULJ supported its credibility determinations with logical explanations, and the conclusions are supported by phone records and witness testimony. Accordingly, we affirm because there is sufficient “evidence in the record that reasonably tends to sustain” the ULJ’s findings. *Wilson*, 888 N.W.2d at 460.

Affirmed.