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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0710**

Shane K. Harris,
Relator,

vs.

Westlund Excavating, LLC.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 4, 2022
Affirmed
Cochran, Judge**

Department of Employment and Economic Development
File No. 42606108-3

Shane Harris, Lake Park, Minnesota (pro se relator)

Westlund Excavating LLC, Lake Park, Minnesota (respondent employer)

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

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

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Relator appeals an unemployment-law judge's (ULJ) decision that relator engaged in employment misconduct rendering him ineligible for unemployment benefits. We affirm.

FACTS

Relator Shane Harris was hired by respondent Westlund Excavating LLC (the company) in March 2019. As part of his job, Harris worked in the shop and regularly drove a pickup truck owned by the company. In April or May of 2020, Harris accidentally backed the truck into a dumpster at the shop, causing damage to the truck—a cracked taillight and a long, indented scratch. Harris spray-painted over the damage. After receiving a report of the damage, company owner Steve Westlund asked Harris about it over the phone. Harris responded that there was no damage. After noticing the damage in person about a month later, Westlund discharged Harris for lying about damaging the truck.

Harris applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development made an administrative determination that Westlund had discharged Harris for damaging company property but that “[Harris’s] actions were not intentional, negligent, or indifferent, and therefore were not employment misconduct.” Based on this determination, Harris was deemed eligible for unemployment benefits. The company appealed.

A ULJ conducted a de novo hearing. Both Harris and Westlund testified. In addition to the facts noted above, Harris testified that he initially lied to Westlund about

the damage to the truck because he did not want to get in trouble. After the hearing, the ULJ issued a written decision in which he determined that, by lying about the damage to the truck, Harris committed an act of dishonesty that constituted employment misconduct. On that basis, the ULJ concluded that Harris had been discharged because of employment misconduct and was therefore ineligible for unemployment benefits. Harris sought reconsideration, and the ULJ affirmed the original decision.

Harris appeals by writ of certiorari.

DECISION

Harris challenges the ULJ's determination that the company discharged Harris for employment misconduct. When reviewing a ULJ's decision, this court may affirm the decision of the ULJ or remand the case for further proceedings. Minn. Stat. § 268.105, subd. 7(d) (2020). Alternatively, we may reverse or modify the decision if the substantial rights of the relator have been prejudiced because, among other things, the decision is affected by an error of law or is unsupported by substantial evidence. *Id.*

An employee discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2020). Whether an employee committed employment misconduct is a mixed question of law and fact. *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016). "Whether the employee committed a particular act is a question of fact." *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *rev. denied* (Minn. Oct. 1, 2008). We view the ULJ's factual findings in the light most favorable to the ULJ's decision and give deference to the credibility determinations made by the ULJ. *Id.* We will not disturb the ULJ's factual findings that

are substantially supported by the record. *Id.* Whether a particular act or acts committed by the employee constitute misconduct is a question of law that we review de novo. *Id.*

With this legal background in mind, we turn to the specific arguments raised on appeal by Harris. Harris contends that the ULJ's decision requires reversal because (1) the record does not support the ULJ's finding that he was dishonest with his employer about the damage to the company truck; (2) his actions did not constitute employment misconduct; and (3) he did not receive a fair hearing. He also appears to argue (4) that the ULJ abused his discretion by denying an additional hearing based on Harris's request for reconsideration. We address each issue in turn.

I. Substantial evidence supports the ULJ's factual finding and credibility determination that Harris was dishonest.

The ULJ found that "Harris intentionally lied to Westlund about [the] damage to [the] company-owned truck in order to avoid being in trouble." The ULJ based this determination on the testimony at the hearing. Harris argues that the record does not support this finding.

Based on our careful review of the hearing testimony, we conclude that substantial evidence in the record supports the ULJ's finding. Substantial evidence is "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) (emphasis omitted) (quotation omitted). Westlund's testimony as well as Harris's own testimony provides substantial evidence to support the ULJ's finding.

Westlund testified as follows. In July 2020, an employee told Westlund that the company truck that Harris drove looked damaged. But, when Westlund asked Harris about it over the phone, Harris told Westlund that “nothing had happened to his pickup.” Westlund did not investigate any further at that point. Approximately a month later, Westlund saw the truck near Harris’s home and noticed that it was damaged. Later that same day, Westlund told Harris that he saw the damage to the truck. Harris replied that he was sorry about the damage. Westlund asked Harris why he did not tell Westlund about the damage when Westlund asked him about it in July. According to Westlund, Harris “didn’t have much to say” other than that he would be willing to pay for the damage in order to keep his job.

At the hearing, Harris admitted to damaging the truck and putting “some touchup paint on it.” And when the ULJ asked Harris if he had been “truthful with [Westlund] when he called . . . to ask about damage to the truck,” Harris said, “No.” When prompted, Harris explained that he did not tell the truth because he “figured [he would] be in trouble for that.” The testimony of Harris and Westlund provides ample support for the ULJ’s finding that Harris “intentionally lied to Westlund about damage to a company-owned truck in order to avoid being in trouble.”

The ULJ also made credibility determinations. The ULJ found that “[t]o the extent that the parties disagreed, Westlund’s testimony was more credible than Harris’[s] testimony because [Westlund’s] testimony was direct, detailed, specific, consistent and followed the most logical chain of events.” We defer to the ULJ’s credibility determinations. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Harris argues that the ULJ's finding that Harris lied to Westlund about the damage to the truck is erroneous because Westlund "did not ask about damage" but instead "asked about what had spilled down the side of the truck." At the hearing, however, Harris did not provide any testimony that Westlund had asked about a spill down the side of the truck. Rather, at the hearing, Harris confirmed that Westlund had asked him about "damage" to the truck. He also confirmed that he did not tell the truth when Westlund asked him about the damage. Because our review of the ULJ's factual finding is limited to the record from the evidentiary hearing, we reject this argument and conclude that substantial evidence in the record supports the ULJ's finding. *See* Minn. Stat. § 268.105, subd. 7(d)(5) (establishing that the court of appeals may reverse or modify a decision if it is "unsupported by substantial evidence *in view of the hearing record as submitted*" (emphasis added)); *see also* Minn. R. 3310.2922 (2021) (providing that "[o]nly evidence received into the record of any hearing may be considered by the unemployment law judge").

II. Harris's actions constitute employment misconduct.

Having determined that substantial evidence supports the ULJ's factual finding that Harris lied to his employer about the damage to the truck, we next consider whether that act constitutes employment misconduct. "Employment misconduct" is "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) (2020). But "simple unsatisfactory conduct" and "good faith errors in judgment if judgment was required" are not employee misconduct. *Id.*, subd. 6(b) (2020). And if an employee is discharged for conduct involving "only a single

incident, that is an important fact that must be considered in deciding whether the conduct rises to the level of employment misconduct.” *Id.*, subd. 6(d) (2020).

“Dishonesty that is connected with employment may constitute misconduct.” *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305, 307-08 (Minn. App. 1994) (determining that employee’s “failure to perform his job responsibilities, coupled with his dishonesty about that failure, constituted misconduct”); *Cherveny v. 10,000 Auto Parts*, 353 N.W.2d 685, 688 (Minn. App. 1984) (concluding that employee’s dishonesty in employer’s investigation into alleged theft was employment misconduct because employee “had a duty to be truthful in his responses” and “dishonesty was a deliberate violation of standards of behavior which the employer has the right to expect of his employee” (quotation omitted)). Employers are reasonably entitled to expect honesty from their employees, and an employee’s dishonesty negatively affects an employment relationship when it means that the employee can no longer be entrusted with job responsibilities. *See Skarhus*, 721 N.W.2d at 344 (holding that though employee’s theft was of less than four dollars in value, it undermined employer’s ability to entrust employee with job responsibilities and therefore constituted employment misconduct).

Here, the ULJ found that “Harris’[s] conduct was a serious violation of [Westlund’s] reasonable expectations” because Harris intentionally lied by denying that there was damage to the company truck when Westlund asked about it. The ULJ concluded that “[t]his issue, by itself, amounts to employment misconduct because it is an act of dishonesty.” We agree.

Harris violated a standard of behavior that his employer had a right to reasonably expect by lying to Westlund about the damage to the company truck. By damaging company property and then lying about it, Harris undermined the company's ability to entrust him with job responsibilities like continuing use of the truck. And though Harris engaged in only a single act of dishonesty, a single incident is sufficient to establish employment misconduct. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 806 (Minn. 2002). We therefore conclude that Harris's act of dishonesty constituted employment misconduct.

We are not persuaded otherwise by Harris's additional arguments supporting his contention that his actions do not constitute employment misconduct. First, he argues that he did not deliberately violate any standards of behavior because his employment contract "did not state anything about reporting damages." But determining whether an act qualifies as employment misconduct does not depend on whether an employer has an express policy regarding that behavior. *See Brown v. Nat'l Am. Univ.*, 686 N.W.2d 329, 333 (Minn. App. 2004) ("We are aware of no law that requires that an employer have an express 'policy' regarding prohibited behavior for employees."), *rev. denied* (Minn. Nov. 16, 2004). Therefore, this argument fails.

Next, Harris argues that the damage to the truck did not cause "any adverse effect on the employer." To support this assertion, he points to the fact that Westlund continued to use the truck and had not yet repaired it at the time of the hearing. This argument also misses the mark. The statutory definition of employment misconduct—conduct that is "a serious violation of the standards of behavior the employer has the right to reasonably

expect of the employee”—does not require proof of an adverse effect on the employer. *See* Minn. Stat. § 268.095, subd. 6(a). And, as discussed above, employee dishonesty may have an adverse effect on an employer simply by undermining the employer’s ability to entrust the employee with certain job responsibilities.

Finally, Harris seems to suggest that his actions fall under several of the categories defined by statute as “not employment misconduct.” *See* Minn. Stat. § 268.095, subd. 6(b) (2020). However, because Harris has not adequately briefed this argument or supported it with citations to the record, we decline to address it. *See State Dep’t of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (noting that a reviewing court may decline to reach issues that are not adequately briefed); *Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017) (stating that a party forfeits a claim by failing to support it with argument or authority), *rev. denied* (Minn. Apr. 26, 2017).

III. Harris received a fair hearing.

Harris also contends that he did not receive a fair hearing. A ULJ must conduct the hearing “as an evidence-gathering inquiry.” Minn. R. 3310.2921 (2021). In doing so, the ULJ “must assist all parties in the presentation of evidence” and control the hearing “in a manner that protects the parties’ rights to a fair hearing.” *Id.*

Harris asserts that the ULJ “failed in his statutory duty to assist Harris in developing the record” and “almost completely precluded Harris from doing so on his own.” Harris further asserts that the ULJ “repeatedly obstructed Harris’s attempts to answer questions

both by explicitly cutting off the questioning and by discouraging Harris from telling what he truthfully wanted to say.” We disagree.

A careful review of the hearing transcript informs us that the ULJ fulfilled his duty to assist in the development of the record and did not prevent or discourage Harris from testifying. The transcript reflects that the ULJ asked Harris a series of questions at the hearing about the damage to the company truck and about his conversations with Westlund. The ULJ’s questions to Harris suggest that the ULJ was trying to clarify the record, not interfere with Harris’s testimony. The ULJ also specifically asked Harris if there was anything else he would like to add, if there were any other questions he would like to ask, and whether he would like to give a closing statement. Harris declined each opportunity. We therefore reject Harris’s claim that he did not receive a fair hearing.

IV. The ULJ’s decision denying Harris’s request for an additional hearing on reconsideration did not involve an abuse of discretion.

Finally, Harris appears to challenge the ULJ’s decision on reconsideration to deny his request for an additional hearing. We review a ULJ’s decision not to hold an additional hearing for an abuse of discretion. *Skarhus*, 721 N.W.2d at 345.

Upon receipt of a timely request for reconsideration, the ULJ must issue an order affirming the original decision, modifying the original decision, or setting aside the original decision and ordering an additional hearing. Minn. Stat. § 268.105, subd. 2(f) (2020). In deciding a request for reconsideration, a ULJ “must not consider any evidence that was not submitted at the hearing, except for purposes of determining whether to order an additional hearing.” *Id.*, subd. 2(c) (2020). A ULJ must order an additional hearing if a party shows

that evidence not submitted at the original hearing “(1) would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence; or (2) would show that the evidence that was submitted at the hearing was likely false and that the likely false evidence had an effect on the outcome.” *Id.*

In his request for reconsideration, Harris presented new information about his discussion with Westlund and a new theory as to why he was discharged. He asserted that he was sleeping when Westlund called to ask about the damage to the truck, he therefore did not understand the question Westlund asked about the damage, and he was not intentionally dishonest in his response to Westlund. Harris also suggested that Westlund used dishonesty as pretext for his discharge and that Westlund actually discharged him for personal reasons related to Harris’s divorce and his wife’s relationship with another employee at the company.

The ULJ considered Harris’s request for reconsideration and affirmed the original decision. In the order denying Harris’s request, the ULJ explained that the information Harris presented in his request for reconsideration did “not show that the evidence submitted at the hearing was likely false,” and Harris did not have good cause for failing to provide the information during the original hearing.

We discern no abuse of discretion by the ULJ in reaching this decision. In his request for reconsideration, Harris did not give any reason as to why he could not have provided this additional information at the evidentiary hearing. And, as noted above, the ULJ specifically asked Harris if he had any additional testimony that he wanted to present before concluding the hearing. Because Harris offered no explanation of good cause for

not providing this information at the hearing, we conclude that the ULJ did not abuse his discretion by affirming the original decision on reconsideration.

Conclusion

In sum, the ULJ's relevant findings of fact are supported by substantial evidence and not clearly erroneous, the actions for which Harris was discharged constitute employment misconduct, Harris received a fair hearing, and the ULJ did not abuse his discretion by denying an additional hearing.

Affirmed.