

*This opinion is nonprecedential except as provided by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
A21-1007**

Rylee Pool,
Relator,

vs.

Premise Health Employer Solutions, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 4, 2022
Affirmed
Smith, Tracy M., Judge**

Department of Employment and Economic Development
File No. 39972803-1

Derek Thooft, Thooft Law, LLC, Eagan, Minnesota (for relator)

Premise Health Employer Solutions, LLC, Brentwood, Tennessee (respondent-employer)

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

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

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Relator Rylee Pool appeals an unemployment-law judge's (ULJ) determination that she is ineligible for unemployment benefits because she was discharged due to employment

misconduct. Because the record supports the ULJ's finding that Pool accessed a colleague's medical record without a business purpose in violation of her employer's policy, and because that action constituted employment misconduct, we affirm.

FACTS

Pool worked full-time for Premise Health Employer Solutions, LLC, from December 2019 until May 1, 2020. Premise Health provides primary and occupational health services to large corporate clients. Pool was a client-care technician and receptionist for Premise Health, and her job duties included answering phones, scheduling appointments, managing the office's proxy email accounts, and updating medical records. Pool's assigned duties required accessing medical records. She was trained that she needed to have a business reason to access a medical record.

On April 16, 2020, Pool filed a report with the Minnesota Occupational Safety and Health Administration (MNOSHA) regarding COVID-19-related safety concerns at Premise Health. That same day, she informed Premise Health's health-center manager that she had complained to MNOSHA.

Four days later, in reviewing the office proxy email accounts as part of her job duties, Pool saw an email from a supervisor who was replying to an automatically generated manager notification that an employee—who was also a patient—was out sick with COVID-19 symptoms. After reading the email, Pool accessed the employee's medical record. The health-center manager observed Pool accessing the colleague's medical records and directed Pool to get out of the record. Pool told the health-center manager that

she was in the record because she needed to know why the colleague was out sick and because they all needed to be aware of the colleague's COVID-19 symptoms.

Premise Health reviewed the incident and determined that Pool had not violated the federal Health Insurance Portability and Accountability Act (HIPAA) but had violated Premise Health's policy requiring a business purpose to access medical records. Citing this policy violation, Premise Health terminated Pool's employment.

Pool applied for unemployment benefits, and respondent Minnesota Department of Employment and Economic Development (DEED) administratively determined that Pool's actions were not employment misconduct and that she was therefore eligible for benefits. Premise Health appealed that decision. Following an evidentiary hearing that included testimony from Pool and the health-center manager, the ULJ found that Pool "intentionally accessed a client's record without a business reason." The ULJ found the health manager's testimony credible and based the finding on that testimony. The ULJ found that Pool's explanation that she had a business reason to access the record was "not credible."

The ULJ concluded that Pool's conduct "seriously violated the standards of behavior [Premise Health] had the right to reasonably expect because she violated a known policy that sought to protect health information." The ULJ concluded that Pool's action constituted employment misconduct, rendering her ineligible for unemployment benefits per Minn. Stat. § 268.095, subd. 4 (2020).

Pool submitted a request for reconsideration, which was denied. Pool appeals.

DECISION

We may reverse or modify a ULJ's decision if the relator's substantial rights have been prejudiced because the ULJ's "findings, inferences, conclusion, or decision" are unsupported by the record, arbitrary or capricious, or affected by other error of law. Minn. Stat. § 268.105, subd. 7(d) (2020).

An employee generally is ineligible for unemployment benefits if she "was discharged because of employment misconduct." Minn. Stat. § 268.095, subd. 4(1). Whether an employee engaged in conduct that disqualifies her from unemployment benefits is a mixed question of fact and law. *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016). The determination of whether an employee committed a particular act is a question of fact. *Cunningham v. Wal-Mart Assocs., Inc.*, 809 N.W.2d 231, 235 (Minn. App. 2011). "Factual findings are reviewed in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ, and will not be disturbed when the evidence substantially sustains them." *Lawrence v. Ratzlaff Motor Express Inc.*, 785 N.W.2d 819, 822 (Minn. App. 2010), *rev. denied* (Minn. Sept. 29, 2010). Whether the factual findings establish employment misconduct is a question of law, which we review de novo. *Id.*

A. The record supports the ULJ's factual finding that Pool violated company policy.

Pool argues that the ULJ erred by finding that she violated company policy by intentionally accessing her colleague's medical record without a business purpose.

Pool argues that she had a business purpose because her job duties included reviewing her employer's proxy email account and, if it showed that an employee was to

be absent, checking the employee's medical record to ensure that a manager was notified. The ULJ found Pool's explanation not credible. The ULJ instead found credible the health-center manager's testimony that the email that Pool reviewed was an email *from* the manager and acknowledged the employee's absence, so it was evident from the email itself that the manager had been notified, leaving no reason for Pool to access her colleague's medical record.

Pool contends that the ULJ's credibility determinations were erroneous. To support this argument, Pool cites the factors listed in *Ywswf v. Teleplan Wireless Services, Inc.*, 726 N.W.2d 525 (Minn. App. 2007), which are part of a standard jury instruction for evaluating witness credibility. She applies each factor to the facts of this case and asserts that together they establish that the health-center manager was not credible. She contends that the manager had limited knowledge of the incident, acted in a dismissive manner throughout the hearing, and gave conflicting testimony about the employer's policy on accessing medical records. But we review the ULJ's findings of fact in the light most favorable to the decision and give deference to the ULJ's credibility determinations. *Lawrence*, 785 N.W.2d at 822. The ULJ found the health-center manager's testimony to be "detailed, forthcoming, and . . . a logical explanation for the chain of events." The ULJ also observed that the health-center manager's testimony was based on firsthand knowledge. These determinations are supported by the record.¹

¹ Pool also suggests that she was discharged not for violating company policy but in retaliation for having filed a complaint with MNOSHA. An applicant is disqualified from benefits if the person is discharged "because of" employment misconduct. Minn. Stat. § 268.095, subd. 4(1). If the true reason for the discharge was retaliation for having engaged in protected conduct, the applicant is not ineligible for unemployment benefits.

B. Pool's conduct constituted employment misconduct.

Pool also argues that the ULJ erred by determining that her conduct constituted employment misconduct. She contends that her conduct was not a serious violation of her employer's standards of behavior and that, even if it was, it fell within two exceptions to the definition of employment misconduct.

Employment misconduct is defined, in part, 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.” Minn. Stat. § 268.095, subd. 6(a) (2020). If conduct involved 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). But a single violation can constitute employment misconduct. *Schmidgall v. Filmtec Corp.*, 644 N.W.2d 801, 806 (Minn. 2002).

Even if the conduct constitutes a serious violation of an employer's behavioral standards under the statutory definition of employment misconduct, a statutory exception may apply. *See* Minn. Stat. § 268.095, subd. 6(b) (2020). Relevant here, an action does not constitute employment misconduct if it was “conduct an average reasonable employee would have engaged in under the circumstances” or if it constituted a “good faith error[] in judgment if judgment was required.” Minn. Stat. § 268.095, subd. 6(b)(4), (6).

See Scheunemann v. Radisson S. Hotel, 562 N.W.2d 32, 34 (Minn. App. 1997). Whether the true reason for a discharge was employment misconduct or retaliation is a question of fact for the factfinder. *See id.* Here, the ULJ found that the reason for Pool's discharge was misconduct, not retaliation for her MNOSHA complaint. This finding is supported by the record. The health-center manager testified that she encouraged Pool to report possible workplace violations and that Premise Health fired Pool based on her violation of its medical-records policy.

Serious Violation of Standards of Behavior

Pool advances several arguments for why her conduct was not an intentional, serious violation of her employer's standards of behavior. She asserts that her conduct fell within the parameters of her job; that it was not a HIPAA violation and was simply a violation of Premise Health's policy, which was not communicated to her; and that it involved a single incident by an otherwise good employee.²

The arguments are unavailing. As for the parameters of her job, the ULJ found, in a decision supported by the record as explained above, that Pool lacked a business reason to access her colleague's medical records. Similarly, with respect to Premise Health's policy, the record—including the health-center manager's testimony—supports the ULJ's finding that Pool was aware of her employer's expectation that medical records be accessed only for business reasons. And Pool did not dispute before the ULJ knowing that Premise Health's policy required a business reason to access medical records. With respect to the fact that the conduct involved a single incident, while that fact must be considered, *see* Minn. Stat. § 268.095, subd. 6(d), it is not determinative, *see Schmidgall*, 644 N.W.2d at 806.

In general, an employee's refusal to abide by an employer's reasonable policies constitutes employment misconduct. *Id.* at 804. In healthcare businesses, this court has recognized the importance of maintaining confidentiality in patient records. *Grp. Health Plan, Inc. v. Lopez*, 341 N.W.2d 294, 297 (Minn. App. 1983) (“[A] violation of patient

² Pool also argues that she did not share the accessed information with anyone else. But the issue of whether Pool shared the information with other parties was not a part of the ULJ's decision and is not necessary for this court to address on appeal.

records confidentiality is misconduct.”). Pool had access to medical records at her employer for business purposes. By accessing the record of a colleague and client for personal, non-business reasons, Pool abused her access privileges, and her intrusion into the colleague’s private medical record was a serious violation of her employer’s reasonable standards. The ULJ therefore correctly concluded that Pool’s action constituted employment misconduct.

Reasonable-Employee Exception

Pool contends, though, that her conduct falls within two exceptions from the statutory definition of employment misconduct: conduct that a reasonable employee would have taken under the circumstances, *see* Minn. Stat. § 268.095, subd. 6(b)(4); and conduct that constituted a good-faith error in judgment, *see id.*, subd. 6(b)(6).

As to the reasonable-employee exception, Pool argues that the COVID-19 pandemic led to her taking on more responsibility and changes in her job duties. She argues that because of these extra responsibilities, she checked the colleague’s medical record to make sure that “nothing got missed.” She argues that other coworkers engaged in the same conduct. But this argument amounts to a restatement of Pool’s explanation that she had a business reason to check the record, which the ULJ found not to be credible. The reasonable-employee exception therefore does not apply.

As to the error-in-judgment exception, Pool argues that her conduct meets this exception given her history as an excellent employee. But Pool does not make any argument for why she would have had to use her judgment in deciding whether to access the record beyond a reiteration of the argument that she needed to do so for a business

purpose—an assertion that was rejected by the ULJ as not credible. This exception, too, is inapplicable.

Pool cites the statute’s remedial purpose to argue that the employment-misconduct provision of the unemployment-benefits statute must be narrowly construed to favor an eligibility determination. *See* Minn. Stat. § 268.031, subd. 2 (2020). And she argues that recent legislative changes reflect evolving standards favoring eligibility—specifically, changes making high-school students eligible for unemployment-insurance benefits, following this court’s ruling that Minnesota high-school students were not categorically ineligible to receive pandemic unemployment assistance under a federal pandemic-relief act. *See In re Muse*, 956 N.W.2d 1 (Minn. App. 2021). But the provisions of the unemployment-benefits statute governing ineligibility based on employment misconduct are not ambiguous. *Wilson*, 888 N.W.2d at 459-60; *see also* Minn. Stat. § 268.095, subd. 6 (2020). And applying those provisions according to their plain language and consistent with judicial precedent, we conclude that the ULJ did not err by determining that Pool’s conduct was employment misconduct rendering her ineligible for benefits.

Affirmed.