

*This opinion is nonprecedential except as provided by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
A21-1198**

Travis Pioske,
Relator,

vs.

Pizza Luce VII, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 20, 2022
Affirmed
Segal, Chief Judge**

Department of Employment and Economic Development
File No. 44280561-3

Travis Pioske, Eagan, Minnesota (pro se relator)

Pizza Luce, Minneapolis, 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 Bjorkman, Presiding Judge; Segal, Chief Judge; and
Bratvold, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that relator was ineligible for unemployment benefits because his employment was terminated due to

employment misconduct for repeatedly being late without providing notice and failing to wear a hair restraint while managing respondent-employer's kitchen. Relator argues that his conduct did not constitute employment misconduct and challenges the ULJ's credibility determinations. We affirm.

FACTS

In May 2016, relator Travis Pioske began employment with respondent Pizza Luce VII, Inc. During his employment, Pioske worked full-time as a kitchen manager. In September 2020, Pizza Luce placed Pioske on a performance improvement plan (PIP). Pioske met with the area manager, the general manager of the location at which Pioske worked, and the human-resources director to discuss the PIP. According to the PIP, the purpose of the meeting "was to bring to [Pioske's] attention serious performance concerns regarding three areas: following safety and sanitation protocols, dependability and accountability, [and] overall substandard performance and insubordination."

The PIP listed the specific conduct that did not meet expectations or violated Pizza Luce's company policies. Among other things, the PIP stated that Pioske had instructed employees to mark a sanitation checklist as completed without actually performing the checklist items; was often late, left early, or failed to provide notice when he would be late; and had "outright refused to follow the direction or fulfill expectations as set forth by his General Manager." The PIP also listed the relevant provisions of Pizza Luce's standard-of-conduct handbook, including that employees were expected to provide notice four hours in advance when they would be late or unable to work, wear an appropriate uniform, and observe safety regulations.

The PIP also identified expectations that Pioske was required to meet going forward. The expectations section of the PIP included the following: “Be on time for ALL scheduled shifts. If you are unable to be on time, this must be communicated to your [general manager] or [area manager] in the event the [general manager] is unavailable.” The PIP further stated: “Expectations—Proper and professional kitchen attire is required. Wear a hat, wear gloves when applicable.”

Finally, the PIP advised Pioske: “You are formally being warned to bring to your attention the severity of this situation. Failure to correct this behavior and/or further violation of company policy will result in additional disciplinary action up to and including termination.” Both Pioske and the general manager signed the PIP.

Approximately one month after Pioske was placed on the PIP, the general manager prepared a coaching statement based on Pioske’s failure to meet the expectations in the PIP.¹ The statement noted that Pioske was late for one of his shifts, failed to attend a meeting for kitchen managers, and failed to punch in or out during one of his shifts, which was another requirement set out in the PIP. The statement reiterated that Pioske was expected to report on time or provide notice that he would be late, to attend all scheduled meetings, and to punch in and out for all shifts. Ten days later, Pioske received another coaching statement. That statement noted that Pioske had failed to write employee reviews and complete his schedule by the imposed deadlines. Both statements advised: “If these

¹ Pioske also received a coaching statement in mid-September 2020, but it addressed behavior that occurred before Pioske was placed on the PIP.

... issues continue it will lead to further disciplinary action up to and including termination.”

In December 2020, Pizza Luce terminated Pioske’s employment. Pizza Luce prepared a document detailing the reasons for terminating Pioske’s employment. The document stated that Pioske “failed to meet or blatantly disregarded” several expectations established in the PIP, including that he be on time for scheduled shifts, dress in proper kitchen attire including a hat, and attend all scheduled meetings. The document listed eight occasions on which Pioske was late. The document also noted that Pioske was “reminded by his [general manager] on multiple occasions that a hat is required as part of his uniform” but that Pioske “continued to not wear a hair restraint while working in the kitchen,” and identified two specific occasions when Pioske was observed not wearing a hair restraint.

Pioske applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) issued a determination that Pioske was eligible for unemployment benefits because he was discharged for unsatisfactory work performance that did not amount to employment misconduct. Pizza Luce appealed the determination, and a ULJ held an evidentiary hearing. The general manager testified that Pioske was discharged for “[p]erformance based issues,” including “multiple attendance issues” and failure to meet the expectations established in the PIP. The general manager also testified that Pioske failed to meet the expectation that he be on time for all shifts, did not provide the required notice when he would be late, and ignored directives to wear a hat in accordance with the health code.

Pioske acknowledged in his testimony that he was instructed to wear a hat, but stated that he “forgot often.” He testified that he had not worn a hat during his entire employment with Pizza Luce, but no one had said anything about it until he was placed on the PIP. He further testified that health inspectors had never expressed a problem with him not wearing a hat. Finally, Pioske admitted that he was late for several of his shifts and did not notify a supervisor that he would be late even though he could have done so, but testified that there was “rarely anybody up” that early² and that his being late did not affect “how the day went or Pizza Luce’s [failures].”

Following the hearing, the ULJ issued a decision that Pioske was discharged for employment misconduct and consequently ineligible for unemployment benefits. The ULJ found that “Pioske was discharged because he failed to inform the employer when he was going to be late for work, in violation of the employer’s policy, and failed to wear a hair restraint, in violation of Minnesota health code,” and that this conduct amounted to employment misconduct. Pioske requested reconsideration, and the ULJ affirmed the decision. Pioske appeals by writ of certiorari.

DECISION

When reviewing a ULJ’s eligibility determination, this court may affirm, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator may have been prejudiced because the findings, inferences, conclusion, or decision are affected by an error of law or are unsupported by substantial evidence. Minn. Stat.

² Pioske’s shifts generally started at 6:00 or 6:30 a.m.

§ 268.105, subd. 7(d) (2020). We “view[] the ULJ’s factual findings in the light most favorable to the decision” and defer to the ULJ’s credibility determinations. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *rev. denied* (Minn. Oct. 1, 2008). “[T]his court will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Id.*

Pioske argues that the ULJ erred in determining that he was ineligible for unemployment benefits because he was discharged for employment misconduct. An individual is ineligible for unemployment benefits if “the applicant was discharged because of employment misconduct.” Minn. Stat. § 268.095, subd. 4(1) (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). But “simple unsatisfactory conduct” and “conduct an average reasonable employee would have engaged in under the circumstances” do not constitute employment misconduct. *Id.*, subd. 6(b)(3)-(4) (2020).

Pioske does not challenge the ULJ’s findings that he failed to notify his employer when he would be late for scheduled shifts and failed to wear a hair restraint. But he argues that these actions did not amount to employment misconduct because his “work performance was the same as an average reasonable employee would have engaged in under the circumstances,” he met his employer’s expectations, and the health department specifically told him that he did not have to wear a hair restraint. He contends that he ultimately “made a decision based upon [his] previous work experience and how [he] was

previously trained and allowed to work under certain conditions” and was discharged for that decision, but that this conduct did not amount to employment misconduct.

We are not persuaded. “An employer has the right to establish and enforce reasonable rules governing absences from work.” *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 28 (Minn. App. 2007). And “[a]s a general rule, 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). “[A]n employee’s decision to violate knowingly a reasonable policy of the employer is misconduct. This is particularly true when there are multiple violations of the same rule involving warnings or progressive discipline.” *Id.* at 806-07 (citation omitted).

Here, Pizza Luce had a policy that if an employee was going to be late for a scheduled shift, the employee was required to give four hours’ notice to a supervisor. Pizza Luce also required employees to follow all applicable state and federal safety regulations and wear an appropriate uniform. Minnesota’s food code provides that “a food employee shall wear hair restraints, such as a hat, hair covering, or net, a beard restraint, and clothing that covers body hair.” Minn. R. 4626.0115(A) (2021). Pioske admitted that he did not provide notice when he was going to be late for a shift and “forgot often” to wear a hat. He testified that health inspectors “never had an issue with [him] not wearing a hat,” but he did not provide any evidence to corroborate his assertion on appeal that health inspectors had explicitly told him that he did not have to wear a hair restraint.

The premise of Pioske’s argument is that his conduct was consistent with how he was trained and performed his job in the four years preceding the PIP. But regardless of

any alleged prior training, once Pioske was placed on the PIP, he was on notice concerning the conduct expected of him for the future and that a failure to come into compliance could result in employment termination. Pioske admitted that he nevertheless violated these directives after the implementation of the PIP. The record therefore supports the ULJ's determination that Pioske was discharged for employment misconduct.

Finally, Pioske argues that his "credibility should be given more weight" and that we should consider "the economic hardship this decision will cause." But as noted above, this court cannot reweigh the evidence and defers to a ULJ's credibility determinations. *Peterson*, 753 N.W.2d at 774. Minnesota law also prohibits the equitable "denial or allowance of unemployment benefits." Minn. Stat. § 268.069, subd. 3 (2020). These arguments thus do not entitle Pioske to relief.

Affirmed.