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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0806**

Rachel Royer,
Relator,

vs.

Inventiv Health, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 24, 2023
Affirmed
Bryan, Judge**

Department of Employment and Economic Development
File No. 48519514-3

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Inventiv Health, Inc., Morrisville, North Carolina (respondent employer)

Considered and decided by Johnson, Presiding Judge; Bratvold, Judge; and Bryan,
Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

Relator challenges the denial of her request to receive unemployment benefits after being discharged for violating her employer's COVID-19 vaccine policy. Relator argues that the unemployment law judge (ULJ) erred by independently reviewing whether relator espoused a sincerely held religious objection to the employer's vaccine policy. We affirm.

FACTS

Relator Rachel Royer applied for unemployment benefits, but respondent Minnesota Department of Employment and Economic Development (DEED) determined she was ineligible. Royer appealed this determination to a ULJ for review and the ULJ conducted an evidentiary hearing in March 2022. The ULJ admitted testimony from Royer and K.C. (Royer's former colleague), as well as documentary exhibits.

According to this evidence, from June 2021 to January 31, 2022, Royer was employed by respondent Inventiv Health, Inc., d/b/a Syneos Health (Syneos). Royer's duties involved sales of oncology medication and required face-to-face contact with others. On September 2, 2021, Syneos adopted a policy requiring employees to be fully vaccinated against COVID-19 if their work involved face-to-face contact. Royer requested an exemption, claiming that her religious beliefs prevented her from getting the vaccine. Syneos responded to her request, stating that "we have concluded you have a sincerely-held religious belief" and that Syneos "will communicate with [Royer] once the review has been completed and a determination is made" as to whether Syneos "can provide an accommodation" to Royer for the vaccination policy. Syneos ultimately determined that

it could not accommodate Royer's request to remain unvaccinated and informed her that if she did not get the vaccine by January 31, 2022, she would be discharged. Royer did not get the vaccine by that date and Syneos discharged Royer on January 31, 2022, for violating its vaccine policy.

Following the hearing, the ULJ found that Royer's refusal to comply with the COVID-19 policy was due to "concerns about the safety of the COVID-19 vaccines" and not the result of a religious objection. The ULJ also determined that "[Royer's] refusal to get vaccinated despite the employer's clear policy was a serious violation of the standards of behavior the employer had the right to reasonably expect of her." According to the ULJ, "Royer's conduct was intentional," "Royer was discharged because of employment misconduct," and, as a result, Royer was ineligible to receive unemployment benefits.

Royer requested reconsideration, arguing that the ULJ erred by independently considering whether Royer had a sincerely held religious belief: "[t]he decision on [her] sincerely held religious belief was ALREADY established and APPROVED by Syneos"; she had a constitutional right to her religious beliefs; "Title VII protects people . . . who have sincerely held spiritual beliefs"; and the "full scientific info on any of the [COVID-19] vaccine ingredients, efficacy and safety has not been released to the public." Royer did not argue that the evidence presented failed to establish that permitting her to remain unvaccinated would cause undue hardship to Syneos.

The ULJ affirmed, stating that "the [ULJ] is not obligated to adopt Syneos's factual determination about the sincerity of Royer's religious beliefs" and "must make her own

findings of fact based upon the evidence obtained at the hearing.” Royer petitioned for certiorari review.

DECISION

Royer argues that in deciding whether she engaged in misconduct, the ULJ was bound by Syneos’s conclusion that Royer’s refusal to comply with the vaccine policy was due to a sincerely held religious belief.¹ We do not agree with Royer’s argument for the following two reasons: (1) the determination of an employer’s reasonable expectations is an objective inquiry, not a subjective one; and (2) Royer’s argument relies on a legal proposition that is inconsistent with the governing statutes and rules.

Under Minnesota law, “workers who are unemployed through no fault of their own” may receive “a temporary partial wage replacement.” Minn. Stat. § 268.03, subd. 1 (2022). When an employer discharges an employee for employment misconduct, however, the employee is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4 (2022). “Employment misconduct” is defined to mean “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) (2022). The determination of employment misconduct presents a mixed question of law and fact. *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 27 (Minn. App. 2007). We view the ULJ’s factual findings in the light most favorable to the decision, defer to the ULJ’s credibility determinations, do not reweigh conflicting evidence, and uphold

¹ Royer makes no challenge to the reasonableness of Syneos’s vaccine policy or to the ULJ’s factual determinations regarding Royer’s conduct.

factual findings if substantial evidence in the record supports them. Minn. Stat. § 268.105, subd. 7(d) (2022); *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016); *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). However, we review questions of law regarding employment misconduct de novo. *Marn v. Fairview Pharm. Servs. LLC*, 756 N.W.2d 117, 121 (Minn. App. 2008), *rev. denied* (Minn. Dec. 16, 2008).

After an initial determination regarding eligibility by DEED, Minn. Stat. § 268.101, subd. 2 (2022), a party may request an evidentiary hearing in front of a ULJ, Minn. Stat. § 268.105, subd. 1(a) (2022). The ULJ's decision is final unless a request for reconsideration is filed. *Id.*, subd. 1a(a) (2022). A relator may obtain appellate review of the ULJ's decision on reconsideration, Minn. Stat. § 268.105, subd. 7 (2022), but issues not raised at the evidentiary hearing or in the reconsideration request are outside the scope of certiorari review. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that a party cannot raise a new issue on appeal); *Peterson v. Ne. Bank–Minneapolis*, 805 N.W.2d 878, 883 (Minn. App. 2011) (applying *Thiele* in an unemployment benefits appeal). Royer argues that, as a legal matter, the ULJ was bound by Syneos's determination regarding whether Royer's objection to the vaccine policy was based on a sincerely held religious belief.² We are not persuaded by this argument for two reasons.

² Royer also argues that the evidence presented does not establish Syneos would experience an undue hardship if Royer remained unvaccinated. However, Royer did not make this argument to the ULJ and we decline to address it. *Thiele*, 425 N.W.2d at 582. In addition, while an employer may need to establish undue hardship in response to an employment-discrimination claim, *see* 42 U.S.C. §§ 2000e-2(a), 2000e(j) (2018), the determination of employee misconduct for purposes of denying or awarding unemployment benefits does not include any such requirement, *see generally* Minn. Stat. § 268.095 (2022). For these

First, a determination of misconduct includes consideration of whether an employer's expectations are reasonable, which is an objective inquiry, not a subjective one. The statutory definition of employment misconduct focuses on whether the employee's conduct constitutes a serious violation of the employer's reasonable expectations. It is well established that an objective test applies to the determination of whether an employer's standard of behavior is a reasonable one. *Wilson*, 888 N.W.2d at 459 (citing *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 290 (Minn. 2006)). The parties agree that the Free Exercise Clause of the First Amendment precludes denial of unemployment benefits if the employee's conduct was based on a sincerely held religious belief.³ *Frazee v. Ill. Dept. of Employment Sec.*, 489 U.S. 829, 832 (1989). Thus, the misconduct determination depends on whether a reasonable employer would find the existence of a sincerely held religious belief. Because the ULJ was required to apply an objective standard to that question, the ULJ was not precluded from making an independent determination that differed from Syneos's conclusion that Royer was unvaccinated due to a sincerely held religious belief.

Second, Royer's argument conflicts with provisions from the unemployment benefits statutes and rules, which indicate that the ULJ's role is to independently review and determine the facts regarding eligibility. For instance, the statute establishes that

reasons, we also decline Royer's alternative request to remand for further proceedings or findings regarding undue hardship.

³ Although portions of Royer's brief could be construed as critical of the ULJ's determination regarding the sincerity of Royer's beliefs, Royer expressly stated that she was not arguing that the denial of benefits violated her rights under the Free Exercise Clause. Instead, Royer clarified that her challenge was limited to whether the ULJ was bound by Syneos's conclusion regarding the sincerity of Royer's religious objection.

DEED is responsible for proper payment of unemployment benefits from the state funds, the employer's position is not binding on DEED's position, and there is no presumption in favor of eligibility—even if the employee and employer agree on certain matters:

Unemployment benefits are paid from state funds and are not considered paid from any special insurance plan, nor as paid by an employer. An application for unemployment benefits is not considered a claim against an employer but is considered a request for unemployment benefits from the trust fund. The commissioner has the responsibility for the proper payment of unemployment benefits regardless of the level of interest or participation by an applicant or an employer in any determination or appeal. An applicant's entitlement to unemployment benefits must be determined based upon that information available without regard to a burden of proof. Any agreement between an applicant and an employer is not binding on the commissioner in determining an applicant's entitlement. There is no presumption of entitlement or nonentitlement to unemployment benefits.

Minn. Stat. § 268.069, subd. 2 (2022). In addition, section 268.105, subdivision 1(a), refers to the evidentiary hearing as a “de novo” hearing, and subdivision 1a(a) mandates the ULJ to determine eligibility based “upon the evidence obtained.” In sum, the statute requires the ULJ to determine eligibility and employment misconduct without regard for whether the employer made conclusions regarding eligibility.

The rules governing the evidentiary hearing also conflict with Royer's proposed point of law. The rules state that the ULJ “must ensure that all relevant facts are clearly and fully developed,” “may obtain testimony from any “person the judge believes will assist the judge in reaching a proper result,” and must conduct the hearing “as an evidence-gathering inquiry.” Minn. R. 3310.2921 (2021). The rules, therefore, require the ULJ to make independent determinations; they do not contemplate deference to the employer, the

employee, or DEED. We acknowledge that many times factfinding is a simple and straightforward exercise, especially when an employee and employer do not dispute a particular fact. However, DEED is also a party to the unemployment benefits proceedings and, given the language of the statute and rules, we cannot agree with Royer that the ULJ is foreclosed from making findings contrary to an employer's statements, assuming that those findings are supported by substantial evidence.

Noticeably, Royer does not cite any authority to support her legal proposition that the ULJ is bound by the employer's statements or agreements regarding eligibility. Nor does Royer attempt to reconcile her argument on appeal with the authorities noted above. In the absence of citation to binding authority and without an explanation of how her argument can be reconciled with the authorities requiring an independent review of the facts, we are not persuaded to adopt Royer's legal proposition.

Affirmed.