

*This opinion is nonprecedential except as provided by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
A22-1096**

Nathan A. Rinne,
Relator,

vs.

Concordia University, St. Paul,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed March 6, 2023
Affirmed
Worke, Judge**

Department of Employment and Economic Development
File No. 48565315-3

Nathan Rinne, Columbia Heights, Minnesota (pro se relator)

Sean R. Somermeyer, Somermeyer Sullivan PLLC, Minneapolis, Minnesota (for
respondent employer)

Keri Phillips, Lossom Allen, Department of Employment and Economic Development,
St. Paul, Minnesota (for respondent department)

Considered and decided by Worke, Presiding Judge; Segal, Chief Judge; and Cleary,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

WORKE, Judge

Relator challenges the determination of an unemployment-law judge (ULJ) that he was discharged for employment misconduct and ineligible for unemployment benefits. We affirm.

FACTS

Relator Nathan A. Rinne worked at respondent Concordia University, St. Paul, as a discovery metadata librarian. Concordia discharged Rinne for violating its policy prohibiting inappropriate conduct and offensive behavior. Rinne requested unemployment benefits. Respondent Department of Employment and Economic Development (DEED) determined that Rinne was ineligible for unemployment benefits because he was discharged for misconduct.

Rinne appealed, and a ULJ held a hearing. Milissa Orchard, former director of human resources, and Dee Ann Kerr, director of human resources operations, testified on behalf of Concordia.

Orchard testified that Rinne requested a meeting to discuss Concordia's social media policy. Orchard, Kerr, and Rinne's supervisor, Jon Neilson, attended the meeting on February 22, 2022, where they discussed Rinne's social media use and how he could not be perceived as speaking on behalf of Concordia. She stated that Rinne "became very physically animated." He raised his voice, interrupted, waved his arms, and smacked the table. Rinne made Orchard feel "uncomfortable [and] concerned for [her] own safety." Orchard stated that Rinne "almost lung[ed]" at her, causing her to "reel back in [her] chair"

because he “invade[d] [her] personal space.” She testified that she was “worried that [she was] going to be physically attacked.”

Kerr testified that Rinne was “very unprofessional” and “very combative.” He invaded space, stood up, raised his hands, pounded on the table, and pointed his finger in Neilson’s face. Kerr stated that she contemplated calling campus security because “everybody became very fearful.”

Orchard testified about other situations involving notices to Rinne about his conduct and unprofessional communications, but she testified that Rinne’s “behavior during that meeting” caused his discharge because “three people in the room were concerned with their own physical safety.” Kerr testified that Rinne’s conduct violated Concordia’s policy on “workplace harassment and other inappropriate conduct.”

Rinne admitted that he was “raising [his] voice, shouting, kind of waiving [his] arms, [and] smacking the table.” He stated:

I was just feeling like I had been under siege and under attack and I told them that. . . . I was really frustrated. And so . . . I knew [the meeting] had gone badly because when [Neilson] said that my behavior had become the issue in the meeting, I pretty much knew at that point that I was going to be fired. Because I’m like crap, I just gave them a really good reason . . . for why they should fire me. And I knew that. I knew that really well; that I had basically gotten too upset and, you know, unprofessional. I could certainly see how someone could describe my . . . behavior that way.

The ULJ determined that Rinne was discharged for the employment misconduct of acting “unprofessionally and disrespectfully” at the meeting and was ineligible for unemployment benefits. The ULJ stated that Rinne’s behavior was “a serious violation”

of Concordia's reasonable expectations because he "raised his voice, gestured elaborately with his hands, slammed his hands on the table, stood up, interrupted others speaking, and caused physical safety concerns." The ULJ decided that Rinne's actions were "intentional, negligent, or indifferent" because he knew that he should have acted professionally and respectfully but failed to do so.

Rinne requested reconsideration. He claimed that Concordia did not provide credible testimony at the hearing and that the ULJ failed to consider his claim that Concordia retaliated against him because he questioned the lawfulness of Concordia's COVID-19 mandates.

The ULJ affirmed the decision. The ULJ found that Concordia's witnesses were "more credible" than Rinne because their testimony was supported by facts that both parties agreed to and "was corroborated in part by Rinne's testimony." The ULJ found that Rinne acknowledged that his conduct was so unprofessional that he had given Concordia a reason to discharge him. The ULJ also found that there was no evidence that Concordia took adverse action toward Rinne regarding his concerns with Concordia's COVID-19 mandates. Rinne filed a petition for writ of certiorari with this court.

DECISION

Rinne argues that the ULJ erred by determining that he was discharged for misconduct and ineligible for unemployment benefits.

An applicant discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2022). "Whether an employee committed employment misconduct is a mixed question of fact and law. Whether the

employee committed a particular act is a question of fact.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citation omitted). We review the “ULJ’s factual findings in the light most favorable to the decision,” giving deference to the ULJ’s credibility determinations. *Id.* We will not disturb the ULJ’s factual findings when they are substantially supported by the evidence. *Id.*

The ULJ found that acting “unprofessionally and disrespectfully” led to Rinne’s discharge. The ULJ found that Rinne became angry and frustrated at the meeting. He raised his voice, gestured elaborately, slammed the table, stood up, and interrupted others. As a result, individuals at the meeting had “physical safety concerns.” Rinne was told to reel back his behavior, but he failed to do so. The record supports the ULJ’s finding.

Orchard testified that Rinne raised his voice, interrupted, waved his arms, smacked the table, stood up, leaned toward her, and invaded her space. When Rinne “almost lung[ed]” at Orchard, she rolled back in her chair and worried that he was going to attack her. Kerr’s description of Rinne’s behavior matched Orchard’s account. And Rinne admitted that he was unprofessional and gave Concordia a reason to discharge him.

Having concluded that the evidence supports the ULJ’s finding that Rinne acted unprofessionally and disrespectfully, we must now review de novo whether this act constitutes employment misconduct. *See Skarhus*, 721 N.W.2d at 344. Employment misconduct is “any intentional, negligent, or indifferent conduct, on 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) (2022).

Rinne claims that 1) his behavior was not intentional, negligent, or indifferent; 2) Concordia retaliated against him for whistleblowing; 3) the evidence at the hearing was false; 4) he was never told of corrective action; 5) a single incident is not misconduct; and 6) he merely committed a good-faith error in judgment.

“[A]ggressive and offensive” conduct can qualify as employment misconduct. *Pitzel v. Packaged Furniture & Carpet*, 362 N.W.2d 357, 357-58 (Minn. App. 1985). Refusing to follow an employer’s reasonable policy is employment misconduct, and “[a] single incident can constitute misconduct when an employee deliberately chooses a course of conduct that is adverse to the employer.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804, 806 (Minn. 2002).

Rinne was discharged for violating Concordia’s policy prohibiting inappropriate and offensive conduct. Concordia provided DEED a copy of the policy, which states: “Concordia St. Paul strives to create and maintain a work environment in which people are treated with dignity, decency, and respect. Employees should be able to work and learn in a safe yet stimulating atmosphere.” The ULJ found that Rinne was disrespectful at the meeting. Rinne’s conduct violates Concordia’s policy, which is employment misconduct.

Rinne’s single incident is employment misconduct because he deliberately chose this course of conduct. He admitted that he had had respectful conversations with Orchard in the past. And the evidence shows that Rinne was told to modify his conduct at the meeting, but he failed or refused to do so. Rinne’s conduct was also adverse to Concordia because it put Concordia’s employees in fear for their physical safety.

Rinne's unprofessional and disrespectful conduct, combined with the fact that he violated Concordia's policy prohibiting such behavior, is employment misconduct disqualifying him from the receipt of unemployment benefits.

Affirmed.