

*This opinion is nonprecedential except as provided by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
A22-1448**

Lynn M. Langer,
Relator,

vs.

Mayo Foundation for Medical Education & Research,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 17, 2023
Affirmed
Connolly, Judge**

Department of Employment and Economic Development
File No. 48606190-5

Lynn M. Langer, Rochester, Minnesota (pro se relator)

Mayo Foundation for Medical Education & Research, Rochester, Minnesota (respondent employer)

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

Considered and decided by Slieter, Presiding Judge; Connolly, Judge; and Florey,
Judge.*

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

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Pro se relator challenges the determination of an unemployment-law judge (ULJ) that she was ineligible for unemployment benefits because she was discharged for employment misconduct after making vulgar and inappropriate social media posts in violation of respondent-employer's policies. We affirm.

FACTS

In March 2022, relator Lynn Langer was discharged from her employment as a lab processing assistant at respondent Mayo Foundation for Medical Education & Research (Mayo) following an investigation into allegations that Langer violated several of Mayo's employment-related policies. The investigation found that Langer posted inappropriate comments on a public facing Facebook page using her personal cell phone and personal account in violation of several of Mayo's policies including its Code of Conduct and Social Media Policy. During the investigation by Mayo, Langer confirmed that she was the one who made the comments.

Following her discharge, Langer applied for unemployment benefits with respondent Minnesota Department of Employment and Economic Development (department). The department issued a "Determination of Ineligibility," stating that Langer violated Mayo's policies, that she should have been aware of such policies, and that she "was discharged for using racial slurs on social media."

Langer appealed the determination and a hearing with a ULJ was scheduled. After this initial hearing, where Mayo did not participate, the ULJ found that Langer was

chemically dependent to alcohol and that her conduct was a “consequence of her chemical dependency.” Accordingly, Langer was deemed to have been “discharged for reasons other than employment misconduct” and eligible for unemployment benefits if all other requirements were met.

Mayo filed a request for reconsideration and the ULJ issued an order setting aside the determination from the initial hearing and ordering a second evidentiary hearing. At the second evidentiary hearing, Langer was unable to present a witness who testified at the initial hearing. Following the second hearing, the ULJ again found that Langer was chemically dependent to alcohol. However, the ULJ found that the Facebook comments were not “a consequence of her chemical dependency.” Accordingly, the ULJ determined that Langer’s discharge was because of employment misconduct, and she was found ineligible for unemployment benefits.

Langer filed a request for reconsideration asserting that her behavior was a result of her chemical dependency and that she should have had the chance to present her witness at the second hearing. The ULJ affirmed the findings of fact and decision issued after the second hearing determining that Langer was ineligible for unemployment benefits. This certiorari appeal follows.

DECISION

This court has stated that:

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. We view the ULJ’s factual findings in the light most favorable to the decision, giving deference to the credibility determinations

made by the ULJ. In doing so, we will not disturb the ULJ's factual findings when the evidence substantially sustains them. But whether the act committed by the employee constitutes employment misconduct is a question of law, which we review de novo.

Skarhus v. Davanni's Inc., 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted).

Additionally, we will defer “to a ULJ’s decision not to hold an additional [evidentiary] hearing and will reverse that decision only for an abuse of discretion.” *Id.* at 345.

Under Minnesota’s unemployment statutes, an applicant who is “discharged because of employment misconduct” is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2020).¹ Minnesota Statutes section 268.095, subdivision 6 defines employment misconduct 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.” *Id.*, subd. 6(a) (2020). Subdivision 6 also provides a list of conduct that does not constitute employment misconduct. *Id.*, subd. 6(b) (2020). This includes “conduct that was a consequence of the applicant’s chemical dependency, unless the applicant was previously diagnosed chemically dependent or had treatment for chemical dependency, and since that diagnosis or treatment has failed to make consistent efforts to control the chemical dependency.” *Id.*, subd. 6(b)(9).

¹ In 2022, the legislature instructed the revisor of statutes to globally replace the term “chemical dependency” with “substance use disorder.” *See* 2022 Minn. Laws ch. 98, art. 5, § 51, at 774. However, no substantive changes have been intended; therefore, we will cite to the 2020 Minnesota Statutes to remain consistent with the ULJ’s decision.

I. The ULJ did not err when it found that Langer's comments were not a consequence of her chemical dependency.

On appeal, Langer does not dispute that her Facebook comments meet the general definition of employment misconduct. Instead, she contends that her conduct falls within an exception to that definition because it was a “direct result” of her chemical dependency, and her “drinking was the main contributing factor in this case.” We are not persuaded. The record shows, and the department does not dispute, that Langer was diagnosed chemically dependent months after her discharge. Whether Langer's comments were a consequence of that chemical dependency is a question of fact that we review in the light most favorable to the ULJ's findings and defer to the ULJ's credibility determinations. *Skarhus*, 721 N.W.2d at 344; *see White v. Univ. of Minn. Physicians Corp.*, 875 N.W.2d 351, 356 (Minn. App. 2016) (stating that claimant's mental illness “could be a relevant fact”); *Kalberg v. Park & Recreation Bd. of Minneapolis*, 563 N.W.2d 275, 277 (Minn. App. 1997) (concluding that the record could only support a “factual finding” that the relator's conduct was because of his chemical dependency).

At the initial hearing, where Mayo did not participate, the ULJ concluded that Langer's conduct was a result of her chemical dependency and, therefore, she was eligible for unemployment benefits. Upon hearing testimony from Mayo's representative at the second hearing, the ULJ determined Langer was not eligible for unemployment benefits.

The ULJ found that

Langer's conduct in posting the comments was not a consequence of her anxiety or her chemical dependency. Langer had a few drinks at a bar but was not intoxicated when she posted the comment. She posted the comments intending

to hurt [her former coworker]. Langer was bitter . . . and made comments to hurt [her former coworker].

This conclusion is supported by the evidence in the record and the ULJ's credibility determinations, to which we defer.

Langer's testimony about her usage of alcohol was inconsistent. There were documents submitted into the record by Mayo that show Langer's initial comments during Mayo's own investigation regarding her drinking were different from how she testified at the hearings. During the Mayo investigation, she stated that she "had a few drinks." In contrast, Langer stated at the initial hearing that she was intoxicated when she made the post. During the second hearing, Mayo's representative disputed Langer's testimony that she was intoxicated. Additionally, Langer admitted to making the Facebook comments with an intention to hurt her coworker. Mayo also submitted evidence of Langer sending other inappropriate messages to former coworkers, suggesting that Langer "intentionally engaged in an ongoing campaign of online harassment of her former coworkers at the VFW," which was not caused by intoxication.

This court has previously held that intentional conduct in violation of an employer's policies was not due to an individual's chemical dependency. *See Campbell v. Rheaume's House of Lettering, Inc.*, No. A12-1018, 2013 WL 1285488, at *4 (Minn. App. Apr. 1, 2013) (Relator's decision to spend the night on company premises despite employer asking him not to was "intentional conduct unrelated to his chemical dependency"); *Jorgensen v. Harty Mech. Inc.*, No. A09-1211, 2010 WL 935480, at *2 (Minn. App. Mar. 16, 2010) (Relator's decision to smoke marijuana in his company vehicle in violation of company

policy was not due to his chemical dependency). We acknowledge that *Jorgensen* and *Campbell* are nonprecedential cases without binding authority. Minn. R. Civ. App. 136.01, subd. 1(c). However, they “may have persuasive value.” *City of St. Paul v. Eldredge*, 788 N.W.2d 522, 527 (Minn. App. 2010), *aff’d*, 800 N.W.2d 643 (Minn. 2011). Here, similarly, the ULJ found that Langer’s conduct was intentional and not due to her chemical dependency.

The evidence, when viewed in the light most favorable to the ULJ’s findings, supports the ULJ’s findings that Langer made the comments at issue after a few drinks but that she was not intoxicated, and that her comments were not a consequence of her chemical dependency.

II. The ULJ did not abuse her discretion when determining not to hold a third hearing.

Langer asserts that the ULJ abused her discretion by refusing to hold a third hearing because Langer was not able to present her original witness at the second hearing. We disagree. A ULJ

must order an additional hearing if a party shows that evidence which was not submitted at the 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 of the decision.

Minn. Stat. § 268.105, subd. 2(c) (2020). The ULJ’s determination not to hold an additional evidentiary hearing will not be reversed absent an abuse of discretion. *Kelly v. Ambassador Press, Inc.*, 792 N.W.2d 103, 104 (Minn. App. 2010).

Langer asserts she has additional evidence and witness testimony to submit on the matter. However, she does not state what additional evidence or witness testimony she will provide other than a witness who was heard at the initial hearing. It is unclear what new evidence would be presented at an additional hearing. The ULJ also informed Langer that she had a right to reschedule the hearing, but Langer did not do so. The record supports the decision to not hold an additional hearing because it would not change the outcome of the proceeding or show that other evidence submitted was likely false. Accordingly, the ULJ did not abuse her discretion.

Affirmed.