

*This opinion is nonprecedential except as provided by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
A23-0434**

Dennis Freeman,
Relator,

vs.

Kelber Catering,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed January 29, 2024
Affirmed
Slieter, Judge**

Department of Employment and Economic Development
File No. 48974706-3

Dennis Freeman, Buffalo, Minnesota (*pro se* relator)

Kelber Catering, Minneapolis, Minnesota (respondent-employer)

Keri Phillips, Katrina Gulstad, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent-department)

Considered and decided by Slieter, Presiding Judge; Cochran, Judge; and Larson,
Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Relator appeals from the determination of an unemployment-law judge (ULJ) that he was ineligible for unemployment benefits because he was discharged for employment

misconduct, arguing that he did not commit employment misconduct. Because relator has not supported his claim with any citation to legal authority, he has forfeited its review upon appeal. And, because upon mere inspection we discern no prejudicial error, we affirm.

FACTS

Following an incident at his employer's workplace on August 20, 2022, relator Dennis Freeman was indefinitely suspended from his employment with respondent-employer Kelber Catering without pay and pending investigation. Freeman never returned to work with Kelber. Freeman then applied for unemployment benefits through respondent Department of Employment and Economic Development (DEED). DEED issued an initial determination that Freeman was ineligible for unemployment benefits, which Freeman appealed to a ULJ. The ULJ, following a hearing that included testimony from Freeman and Kelber's director of human resources as well as multiple exhibits, determined that Freeman was discharged due to employment misconduct, and he was, therefore, ineligible to receive unemployment benefits. Freeman requested reconsideration of the ULJ's decision. On reconsideration, the ULJ affirmed the determination that Freeman was discharged for employment misconduct. Freeman petitioned for a writ of certiorari.

DECISION

Workers who are "unemployed through no fault of their own" may receive unemployment insurance benefit payments as "a temporary partial wage replacement." Minn. Stat. § 268.03 (2022). But when an employer "discharges" an employee for "employment misconduct," that employee is ineligible to receive unemployment benefits.

Minn. Stat. § 268.095, subd. 4 (2022). A “discharge” includes “[a] suspension from employment without pay that is of an indefinite duration.” Minn. Stat. § 268.095, subd. 5(b) (2022).

“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.” Minn. Stat. § 268.095, subd. 6(a) (2022). “Whether an employee committed employment misconduct is a mixed question of fact and law.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). “Whether the employee committed a particular act is a question of fact” and “whether the act committed by the employee constitutes employment misconduct is a question of law, which we review de novo.” *Id.*

We review a ULJ’s findings of fact “in the light most favorable to the decision.” *Id.* And we will not disturb the ULJ’s factual findings “so long as there is evidence in the record that substantially supports them.” *Gonzalez Diaz v. Three Rivers Cmty. Action, Inc.*, 917 N.W.2d 813, 815-16 (Minn. App. 2018); *see also Fay v. Dep’t of Emp. & Econ. Dev.*, 860 N.W.2d 385, 387 (Minn. App. 2015) (providing that we “rely on findings that are substantially supported by the record” (quotation omitted)). And because we defer to the ULJ’s ability to weigh conflicting evidence, we also do not reweigh that evidence on review. *Whitehead v. Moonlight Nursing Care, Inc.*, 529 N.W.2d 350, 352 (Minn. App. 1995). When the credibility of a witness has a significant effect on the outcome of a decision; however, the ULJ must set out its reason for crediting or discrediting the witness’ testimony. Minn. Stat. § 268.105, subd. 1a (2022). Credibility determinations which

satisfy that requirement “are the exclusive province of the ULJ and will not be disturbed on appeal.” *Bangtson v. Allina Med. Grp.*, 766 N.W.2d 328, 332 (Minn. App. 2009) (quotation omitted).

This court “may reverse or modify the [ULJ’s] decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are,” among other enumerated reasons, affected by an error of law or “unsupported by substantial evidence in view of the hearing record as submitted.” Minn. Stat. § 268.105, subd. 7(d) (2022). But “[a]n assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is [forfeited] and will not be considered on appeal unless prejudicial error is obvious on mere inspection.” *Louden v. Louden*, 22 N.W.2d 164, 166 (Minn. 1946); *see also Surf & Sand, Inc. v. Gardebring*, 457 N.W.2d 782, 788 (Minn. App. 1990) (affirming when a claim of error was not supported by argument or authority and “inspection” showed no “obvious prejudice”), *rev. denied* (Minn. Sept. 20, 1990).

From our review of Freeman’s *pro se* brief, we discern that Freeman expresses disagreement with the ULJ’s determination that he was discharged for employment misconduct. However, Freeman’s assertion of error lacks explanation, and he cites no legal authority to support it.¹ Therefore, Freeman forfeits any such claim of error, and our review

¹ “While an appellant acting *pro se* is usually accorded some leeway in attempting to comply with court rules, he is still not relieved of the burden of, at least, adequately communicating to the court what it is he wants accomplished and by whom.” *Carpenter v. Woodvale, Inc.*, 400 N.W.2d 727, 729 (Minn. 1987); *see also Gruenhagen v. Larson*, 246 N.W.2d 565, 569 (Minn. 1976) (stating that a court generally will not modify ordinary rules and procedures just because a *pro se* party lacks the skills and knowledge of an

is limited to whether, upon mere inspection, the record reveals the presence of obvious prejudicial error such that we should consider his otherwise forfeited claims. *Louden*, 22 N.W.2d at 166.

Our inspection of the record reveals that the ULJ made factual findings which are supported by substantial evidence and are sufficient to conclude that the ULJ committed no obvious prejudicial error. The ULJ heard testimony and received exhibits from the parties and found:

- “Freeman and a temporary worker got into a dispute They exchanged vulgar words in the view and earshot of the public.”
- “Freeman told his manager that if the temporary worker came back and bothered him, he was going to ‘handle it like a man’ while striking his clenched fist into the palm of his other hand. This was a threat of violence against the temporary worker. It was not in self-defense.”
- “Upon hearing that, Freeman’s manager told him to punch out. Freeman did not punch out. Freeman started to raise his voice and swear at his manager in a space where ticketed guests could hear him. Freeman’s manager then escorted him away from the concessions stand.”
- “Freeman was indefinitely suspended without pay pending investigation” because of “the events . . . involving the temporary worker and his manager.”

The ULJ made its findings based on a credibility determination after weighing the evidence and found that:

- The testimony of Kelber’s human resources director was detailed, reliable, and provided the most likely explanation for the chain of events. That testimony was based on a thorough investigation and supported by a contemporaneous email from Freeman’s supervisor and detailed testimony about a phone call with his manager.

attorney); *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001) (emphasizing that although “some accommodations” can be made for *pro se* litigants, they are “generally held to the same standards as attorneys and must comply with court rules”).

- Freeman’s testimony was vague, unconvincing, and not credible. Freeman disputed the version of the events that the employer provided, testifying that he never actually said he would “handle it like a man,” asserting that he did not swear at his manager, and alleging that his supervisor had motive to falsify allegations against him because he was a manipulator.

In sum, Freeman assigned error with mere assertion not supported by argument and legal authority, and our inspection of the record reveals no obvious prejudicial error. The ULJ’s determination that Freeman was discharged for employment misconduct is supported by substantial evidence that he was, in fact, discharged for employment misconduct.

Affirmed.