

*This opinion is nonprecedential except as provided by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
A23-0956**

Christine A. Koch,
Relator,

vs.

Wells Fargo Bank, NA,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed March 11, 2024
Affirmed
Schmidt, Judge**

Department of Employment and Economic Development
File No. 49200079-3

Barbara L. Jones, St. Paul, Minnesota (for relator)

Joseph G. Schmitt, Nilan Johnson Lewis, P.A., Minneapolis, Minnesota (for respondent
Wells Fargo Bank, NA)

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

Considered and decided by Wheelock, Presiding Judge; Schmidt, Judge; and
Reilly, Judge.*

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

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Relator Christine A. Koch seeks review of an unemployment-law judge's (ULJ) decision that Koch was not eligible for unemployment benefits because respondent-employer discharged her for employment misconduct. Relator argues that (1) the ULJ failed to adequately develop the record regarding the incident underlying her discharge, and (2) the incident did not rise to the level of employment misconduct. We affirm.

FACTS

Respondent Wells Fargo Bank, NA employed Koch to work on complaints from customers related to their mortgages. Koch became frustrated by a colleague's alleged mishandling of a customer's case by failing to stop a check. Koch emailed her manager that she wanted "to punch [the colleague] in the teeth" and "kick them where it counts." Koch also wrote that she wanted to "throw rocks at [Wells Fargo] signs" and that Wells Fargo "tends to make sexist decisions." Koch saved the email in the customer's closing documents, which are permanent records of the case and viewable by other Wells Fargo employees. Wells Fargo discharged Koch, referencing its policy of prohibiting "violent and potentially threatening" statements.

After Wells Fargo discharged Koch, she applied for unemployment benefits. After a hearing, the ULJ determined that Koch engaged in misconduct and was, therefore, ineligible to receive unemployment benefits. Koch filed a request for reconsideration, and the ULJ affirmed the decision. This certiorari appeal follows.

DECISION

In unemployment-benefit cases, we review “the ULJ’s factual findings in the light most favorable to the decision” and we do not “disturb those findings as long as there is evidence in the record that reasonably tends to sustain them.” *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted). “Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law.” *Id.* (quotation omitted). We review de novo the question of whether a particular act constitutes disqualifying misconduct. *Id.*

Unemployment benefits are intended to provide financial assistance to workers who have been discharged from employment “through no fault of their own.” *Stagg*, 796 N.W.2d at 315 (quotation omitted). An applicant is ineligible for unemployment benefits if they are discharged for employment misconduct, defined 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.” Minn. Stat. § 268.095, subds. 4(1), (6)(a) (2022). “As 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).

Koch argues the ULJ erred in concluding that Koch engaged in employment misconduct because the “threat” in her email was not serious. We are not persuaded.

The ULJ found that Wells Fargo “had the right to reasonably expect that Koch would not write an email stating she wanted to harm another employee or damage company property.” The ULJ rejected Koch’s testimony that including the email in the closing

documents was “inadvertent,” finding that Koch could have taken reasonable steps to prevent saving the email. The ULJ then concluded that “Koch’s conduct seriously violated the standards of behavior Wells Fargo had the right to reasonably expect because she intentionally wrote statements which may reasonably be perceived as threatening and she included them in closing documents.”

The record contains evidence that reasonably tends to sustain the ULJ’s findings. *Stagg*, 796 N.W.2d at 315. For instance, Koch sent an email proclaiming her desire to “punch” and “kick” her colleague, and Koch’s email was saved as part of the closing documents. The evidence supports the ULJ’s findings.

We also must defer to the ULJ’s credibility determinations. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). The ULJ rejected Koch’s testimony that including the email in the closing documents was inadvertent. The ULJ found Koch could have taken reasonable steps before saving the email in the closing documents.

In applying our de novo review, we discern no error with the ULJ’s conclusion that Koch violated the standards of behavior that Wells Fargo had the right to reasonably expect of her. *Stagg*, 796 N.W.2d at 315; Minn. Stat. § 268.095, subds. 4(1), (6)(a). The ULJ properly concluded that Koch “should have known to restrain from making” statements about wanting to hurt another employee. The ULJ credited Koch’s testimony that she had no intention of hurting anyone, but also found that Wells Fargo had a reasonable expectation that their employees would refrain from making such statements.

Koch also argues the ULJ failed in its obligation to help develop the record during her testimony. A ULJ has an obligation to “assist all parties in the presentation of

evidence” and “ensure that all relevant facts are clearly and fully developed.” Minn. R. 3310.2921 (2021). But the ULJ is not the attorney for an unrepresented party and must “maintain neutrality to assure fairness to all parties.” *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 32 (Minn. App. 2012).

Koch does not point to any specific place in the transcript to support her argument that the ULJ failed to assist her in developing the record. We will not presume error on appeal. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) (stating that error is not presumed on appeal and appellant bears the burden of showing error on appeal). Our review of the transcript reveals that the ULJ fulfilled the obligation of assisting Koch in developing the record while also remaining neutral. *Stassen*, 814 N.W.2d at 32. For example, the ULJ asked Koch clarifying questions during her testimony. In addition, the ULJ allowed Koch to testify in detail regarding her conduct, admitted her written statements into evidence, and permitted her to make a closing statement. We conclude the ULJ did not fail in the obligation to assist Koch in developing the record.

Affirmed.