

*This opinion is nonprecedential except as provided by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
A24-0455**

Marcel Vaudrin,
Relator,

vs.

Tri-Valley Opportunity Council, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed October 14, 2024
Affirmed
Schmidt, Judge**

Department of Employment and Economic Development
File No. 50042479-3

Marcel Vaudrin, Crookston, Minnesota (pro se relator)

Tri-Valley Opportunity Council, Inc., Crookston, Minnesota (respondent employer)

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

Considered and decided by Schmidt, Presiding Judge; Ross, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Relator Marcel Vaudrin challenges an unemployment-law judge's decision that he was not eligible for unemployment benefits, contending that his actions of urinating in public did not constitute employment misconduct. We affirm.

FACTS

Respondent-employer Tri-Valley Opportunity Council (Tri-Valley) employed Vaudrin as a maintenance assistant and backup bus driver. In September 2023, an employee observed Vaudrin urinating in the Tri-Valley shop wash bay. A supervisor instructed Vaudrin to use the bathroom. The next month, a member of the public reported seeing Vaudrin urinating in an alley near the bus that Vaudrin was operating.

Tri-Valley supervisors investigated. Vaudrin confirmed that he urinated in the alley, and Tri-Valley terminated him for misconduct. Tri-Valley noted that Vaudrin should have known his behavior was inappropriate due to the earlier incident, and that Vaudrin should have known his conduct violated the company's "professional conduct policy."

Vaudrin applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) initially determined that Vaudrin was eligible to receive unemployment benefits. Tri-Valley appealed.

After a hearing, the unemployment-law judge determined that Vaudrin engaged in employment misconduct and was ineligible to receive unemployment benefits. Vaudrin filed a request for reconsideration. The reviewing unemployment-law judge affirmed. This certiorari appeal follows.

DECISION

Individuals who are "unemployed through no fault of their own" may receive unemployment benefits as a "temporary partial wage replacement." Minn. Stat. § 268.03, subd. 1 (2022). But an individual who was discharged for "employment misconduct" is ineligible for benefits. Minn. Stat. § 268.095, subd. 4(1) (2022). The legislature has

defined 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) (2022). “[A]n employee’s decision to violate knowingly a reasonable policy of the employer is misconduct.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 806 (Minn. 2002).

Whether an employee’s actions constitute 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 an employee committed a particular act is a question of fact that we review in the light most favorable to the unemployment-law judge’s decision. *Id.* Whether the act constitutes employment misconduct is a question of law that we review de novo. *Id.*

Vaudrin argues his act did not constitute misconduct because Tri-Valley’s policy only “expected” an employee “to conduct him/herself in a professional manner.”¹ We disagree. Although Tri-Valley’s policy did not include an explicit prohibition against public urination, an express policy is not required to find misconduct. *Brisson v. City of Hewitt*, 789 N.W.2d 694, 697 (Minn. App. 2010) (holding that employee’s act constituted misconduct even absent a policy forbidding viewing pornography on a company computer). Tri-Valley’s policy expecting professionalism covered Vaudrin’s conduct.

Moreover, Crookston’s city code makes it unlawful for an individual to urinate in public. *See* Crookston, Minn., City Code § 130.05(F)(1) (2019). Tri-Valley’s policy

¹ Vaudrin also argues his act did not constitute misconduct because other drivers urinated outside of bathrooms. We are not persuaded. Whether other employees were discharged for violating the same rules is not relevant to our analysis. *See Sivertson v. Sims Sec., Inc.*, 390 N.W.2d 868, 871 (Minn. App. 1986), *rev. denied* (Minn. Aug. 20, 1986).

regarding professionalism inherently includes the concept that employees will follow the law while acting as an agent for the company. We discern no error in the unemployment-law judge's conclusion that Tri-Valley terminated Vaudrin for employment misconduct.

Before the unemployment-law judge, Vaudrin also contended that he had a medical condition that required him to urinate immediately upon feeling the urge to urinate. Vaudrin claimed that he had "a bladder infection," "a prostate problem," and a prior injury that coincided with the onset of his bladder issues. Vaudrin testified that his doctor told him to watch his diet, drink cranberry juice, and to take over-the-counter medication if his condition worsened. Vaudrin argued that the medical condition should have excused his actions from constituting employment misconduct.

This argument fails because Vaudrin did not submit any evidence to the unemployment-law judge that a doctor had diagnosed him with a medical condition that would require him to urinate immediately upon having the urge to urinate. Vaudrin also provided no evidence that he informed Tri-Valley of any medical condition before he was terminated. Even if Vaudrin could have received an accommodation, his employer would need to know about the condition. *See* Minn. Stat. § 363A.08, subd. 6(a) (2022);² *see also* *Larson v. Koch Refin. Co.*, 920 F. Supp. 1000, 1005 (D. Minn. 1996) ("[P]roviding accommodation is only appropriate where the employer knows that the Plaintiff is disabled and is in need of accommodation.").

² Even if Vaudrin had a medical condition that required him to urinate in public the moment he felt the urge to go, the record reveals there was a gas station with a bathroom four blocks away from the alley where Vaudrin urinated.

The unemployment-law judge found that Vaudrin's testimony related to his medical issues "was exaggerated and not believable." The unemployment-law judge determined that, although Vaudrin may have had prostate problems that caused him discomfort, a "preponderance of the evidence supports a finding that Vaudrin does not have a medical condition that is so severe that he cannot hold the urge to urinate for five minutes." The unemployment-law judge, instead, found that the "most likely explanation is Vaudrin was often indifferent towards using public restrooms[.]" We give deference to the judge's credibility determinations. *Skarhus*, 721 N.W.2d at 344.

We conclude the unemployment-law judge correctly determined that Vaudrin was discharged for employment misconduct and thus is ineligible for unemployment benefits.

Affirmed.