

*This opinion is nonprecedential except as provided by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
A24-0928**

Curtis Ford,
Relator,

vs.

APG Cash Drawer, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed February 24, 2025
Affirmed
Cochran, Judge**

Department of Employment and Economic Development
File No. 50372221-3

Curtis Ford, Savage, Minnesota (pro se relator)

APG Cash Drawer, LLC, Minneapolis, Minnesota (for respondent employer)

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

Considered and decided by Harris, Presiding Judge; Ross, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this certiorari appeal from the decision of an unemployment-law judge (ULJ), relator challenges the ULJ's conclusion that he is ineligible for unemployment benefits

arguing that (1) certain factual findings are unsupported by substantial evidence and (2) relator's conduct does not rise to the level of employment misconduct. Because the evidence reasonably supports the ULJ's factual findings and relator's conduct meets the definition of employment misconduct, we affirm.

FACTS

The following facts are drawn from the testimony and exhibits in the record before the ULJ. Respondent APG Cash Drawer LLC is an international business that manufactures cash drawers. In October 2023, APG hired relator Curtis Ford to be director of global marketing. His responsibilities included representing the company at trade shows, branding, producing print and online materials, and corresponding with customers. Ford also led a small marketing team.

APG's most important trade show is the National Retail Federation (NRF) trade show. In January 2024, the three-day trade show was held in New York City. After being hired, it was Ford's responsibility to prepare marketing materials and promotional products for the NRF trade show. Ford's job duties also required that he attend the NRF trade show as a representative of the company.

In February 2024, a few weeks after the NRF trade show, APG terminated Ford's employment. Ford applied for unemployment benefits with respondent Minnesota Department of Employment and Economic Development (DEED). DEED issued an initial determination of eligibility. APG administratively appealed the determination, arguing that Ford was ineligible for unemployment benefits. DEED scheduled a hearing before a ULJ. The ULJ heard testimony from APG's president, Ford, and Ford's direct supervisor.

The president testified that Ford was discharged because he failed to fulfill his job responsibilities as marketing director, especially those relating to the NRF trade show. According to the president, Ford failed to arrange for timely shipment of marketing materials and promotional products for the NRF trade show, and, as a result, APG lacked the resources it needed at the trade show. The president also testified that, while in New York, Ford missed important preshow team meetings that were held each morning of the show. The president further testified that Ford did not have much of a presence “on the show floor” during the NRF trade show. The president stated that Ford’s visibility at the show was important because Ford was APG’s marketing director.

Ford’s direct supervisor corroborated the president’s testimony, testifying that Ford missed the preshow team meetings and was not consistently present on the NRF trade-show floor. The supervisor confirmed that all employees present at the NRF trade show, including Ford, were sent a group text message informing them of each preshow team meeting. The supervisor further testified to his attempts to contact Ford during the NRF trade show, to which Ford “sometimes” responded.

Ford’s testimony differed from the testimony of his supervisor and the president. While Ford conceded that he was responsible for some of the issues with the trade-show promotional materials, he asserted that most of the shipping issues were due to problems beyond his control. Regarding his attendance at the trade show, Ford testified that he attended all preshow meetings but one. Ford stated that he missed that meeting because he was addressing a technology issue. He also maintained that he was present on the NRF trade-show floor each day from opening until approximately 4:30 p.m.

In a written decision following the hearing, the ULJ determined that Ford engaged in employment misconduct and therefore was ineligible for unemployment benefits. The ULJ made factual findings to support this determination, which were based on the ULJ's determination that the testimony of the APG representatives was more credible than Ford's testimony. Those factual findings included that Ford was not present "during pre-show meetings" and that Ford was not "on the trade show floor during the majority of the NRF show." And the ULJ determined that APG had a "right to reasonably expect that their director of global marketing would attend pre-show meetings and be present on the trade floor during a major promotional event." Because Ford did not meet this reasonable expectation, the ULJ concluded that APG terminated Ford for employment misconduct and Ford was therefore ineligible to receive unemployment benefits under Minnesota law. Ford requested reconsideration of the ULJ's decision, which was denied.

Ford appeals by writ of certiorari.

DECISION

When reviewing a ULJ's decision, we may affirm or remand for further proceedings, or we may reverse or modify the decision if the substantial rights of the relator may have been prejudiced because the ULJ's "findings, inferences, conclusion, or decision are," among other reasons, affected by an error of law or unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2024).

Whether an employee committed employment misconduct is a mixed question of law and fact. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). Whether the employee committed a particular act is a question of fact. *Icenhower v. Total Auto.*,

Inc., 845 N.W.2d 849, 855 (Minn. App. 2014), *rev. denied* (Minn. July 15, 2014). Whether the act of an employee amounts to misconduct is a question of law that is reviewed de novo.¹ *Stagg*, 796 N.W.2d at 315.

We review the ULJ’s findings of fact in the light most favorable to the decision and will “not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them.” *Id.* If there is conflicting evidence in the record, we defer to the ULJ’s ability to weigh the conflicting evidence. *Johnson v. Walch & Walch, Inc.*, 696 N.W.2d 799, 800 (Minn. App. 2005), *rev. denied* (Minn. July 19, 2005). “Credibility determinations 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) (quoting *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006)). But if the credibility determination has a significant effect on the outcome of the decision, “the [ULJ] must set out the reasons for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1a (2024).

I. There is substantial evidence to support the ULJ’s determination.

Ford argues that the ULJ’s decision of ineligibility should be reversed because certain factual findings made by the ULJ are not supported by substantial evidence.

¹ In Ford’s brief he states that “APG bears the burden of proving misconduct.” This is incorrect. “An applicant’s entitlement to unemployment benefits must be determined based upon the information available without regard to burden of proof.” Minn. Stat. § 268.069, subd. 2 (2024); *see also Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 205 (Minn. App. 2004) (“Employment misconduct is now determined without regard to any common law burden of proof.”), *rev. denied* (Minn. Mar. 30, 2004). The ULJ therefore makes its decisions based on “independent findings of fact” not whether a party met a burden of proof. *Vargas*, 673 N.W.2d at 205.

Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Posey v. Securitas Sec. Servs. USA, Inc.*, 879 N.W.2d 662, 665 (Minn. App. 2016) (quotation omitted). In making this argument, Ford challenges the ULJ’s determination that the preponderance of the evidence shows that (1) “Ford was not present during the trade-show meetings and the majority of the NRF,” and (2) “Ford did not miss these meetings or the show for a business-related purpose or [for] reasons beyond his control.” Ford’s argument is unavailing.

First, the record demonstrates there is substantial evidence to support the ULJ’s finding regarding Ford’s absence from the daily preshow meetings and during the show itself. At the hearing, the president testified Ford was not present at any of the preshow team meetings even though Ford was informed of the meetings through a group text message that was sent to all 14 APG employees who attended the NRF trade show. The president also testified that Ford was not “on the show floor much to the point where we were all wondering where he was.” Similarly, Ford’s supervisor testified that Ford was not present at any of the preshow team meetings and that he was reachable and present on the NRF trade-show floor only “from time to time.”

To the extent that Ford’s testimony differed from testimony of the president and the supervisor, the ULJ found that “the employer’s witnesses’ testimony was more credible.” To support this credibility determination, the ULJ highlighted how the supervisor’s testimony corroborated the president’s testimony and how Ford’s cross-examination about the preshow meetings called into question his own testimony that he actually attended two of the three meetings. Because the ULJ set forth logical reasons for finding the APG

witnesses more credible than Ford, we defer to that credibility determination. *See* Minn. Stat. § 268.105, subd. 1a(a); *Bangtson*, 766 N.W.2d at 332. And, because a reasonable mind could accept the APG witness testimony “as adequate to support [the] conclusion” that Ford was absent from preshow meetings and the majority of the NRF trade show, we conclude there is substantial evidence to support this factual finding. *See Posey*, 879 N.W.2d at 665.

Ford also argues that there is a lack of substantial evidence to support a related factual finding by the ULJ—specifically, that Ford’s absences were not due to business-related reasons or for reasons beyond his control. The ULJ made this finding based on Ford’s failure to provide reasons for his absences and based on evidence that APG employees had difficulty reaching Ford during the NRF trade show. Ford argues the evidence relied upon by the ULJ does not support the ULJ’s finding because he provided a business-related reason for missing one of three preshow meetings and because the ULJ “failed to clarify” through questioning the length of Ford’s absences from the NRF trade show. We are not persuaded.

As an initial matter, the record reflects that the ULJ did inquire into Ford’s absences. At the hearing, the ULJ asked Ford if he missed any of the preshow meetings and Ford responded that he missed only one meeting. Ford testified that he missed the first meeting because he was resolving a technology issue. The ULJ then asked why he thought the president testified that Ford was absent from all the meetings. In response, Ford insisted that he was not absent except for the one meeting and that the president thought otherwise due to a “[l]ack of awareness.” The ULJ also asked Ford if he was present on the NRF

trade-show floor and Ford responded, “Yes, I was” and stated there were multiple witnesses who saw him conducting activities on the floor. The ULJ offered Ford another opportunity at the end of the hearing to explain any absences, but Ford declined. In sum, given Ford’s testimony, the ULJ sufficiently inquired into Ford’s absences.

In addition, viewing the testimony as a whole, we conclude that substantial evidence supports the ULJ’s determination that Ford did not provide compelling reasons for his absences. The record reflects that the ULJ considered Ford’s testimony regarding his attendance at the preshow meetings, his reason for missing the first meeting, and his testimony about his presence on the NRF trade-show floor. But the ULJ did not credit that testimony. Instead, the ULJ credited the APG witnesses. Given the ULJ’s credibility determination and the overall lack of evidence as to the reason or reasons for Ford’s absences during the NRF trade show, we conclude there is sufficient evidence to support the ULJ’s determination that Ford’s absences were not due to business-related reasons or reasons beyond his control.

II. The ULJ did not err in determining that Ford was discharged for employment misconduct.

Ford next argues that the ULJ erred by determining that Ford committed employment misconduct. Employment misconduct is 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, subd. 6(a) (2024). “The employer has a right to expect an employee to work when scheduled.” *Little v. Larson Bus Serv.*, 352 N.W.2d 813, 815 (Minn. App.

1984), *superseded by statute on other grounds*, Minn. Stat § 268.095, subd. 6(e) (Supp. 2007). A single absence, without permission from the employer, can amount to misconduct. *Hanson v. Crestliner Inc.*, 772 N.W.2d 539, 543 (Minn. App. 2009).

Ford makes two arguments to support his contention that the ULJ erred in determining his conduct at the NRF trade show meets the definition of employment misconduct: (1) APG did not communicate to Ford what its expectations were regarding his duties at the NRF trade show, and (2) his absences do not amount to employment misconduct. DEED responds that (1) Ford either knew, or should have known, that his professional duties at the NRF trade show required that he be present at preshow meetings and on the NRF trade-show floor and (2) that his absences amount to misconduct. We agree with DEED.

First, Ford's argument that APG failed to express adequately its expectation regarding Ford's need to be present and accessible at the NRF trade show is unavailing because it is contrary to the record. The record reflects that Ford was informed of the preshow meetings prior to their occurrence through a group text message, that Ford was aware that he needed to be at the NRF trade show from 8:00 a.m. to approximately 4:30 p.m., and that Ford's supervisor had contacted Ford to inquire about his whereabouts during the NRF trade show. Thus, Ford was informed of when he needed to be present for work during the NRF trade show and was aware of his supervisor's expectation that he be present on the NRF trade-show floor and attend preshow meetings. Regardless of whether the president and the supervisor expressly informed Ford that his presence was mandatory,

APG had a reasonable right to expect that Ford, as director of global marketing, would be present at work when scheduled. *See Little*, 352 N.W.2d at 815.

Second, Ford argues that his absences, as found by the ULJ, were not sufficient for the ULJ to conclude that Ford engaged in a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee. More specifically, Ford asserts the ULJ erred in concluding that he engaged in employment misconduct because the ULJ did not quantify how long Ford was absent from the NRF trade-show floor. The standard for employment misconduct, however, does not require an exact determination of the amount of time that Ford was absent for his actions to constitute employment misconduct. Rather employment misconduct is 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, subd. 6(a) (emphasis added). And a single absence, without permission from the employer, can amount to misconduct. *Hanson*, 772 N.W.2d at 543. As a result, the ULJ did not err by not quantifying Ford’s absences in the order. Nor did the ULJ err in concluding that Ford intentionally committed “a serious violation” of APG’s reasonable expectations based on the ULJ’s findings that Ford missed the preshow meetings and was not present during most of the NRF trade show without a compelling reason. Minn. Stat. § 268.095, subd. 6(a). Ford’s violation of APG’s reasonable expectations was serious because the NRF trade show was APG’s biggest trade show of the year. Consequently, Ford’s conduct meets the definition of employment misconduct. *See* Minn. Stat. § 268.095, subd. 6(a).

In sum, the ULJ did not err by determining that Ford was ineligible for unemployment benefits.

Affirmed.