

*This opinion is nonprecedential except as provided by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
A24-1058**

Jennifer Esposito,
Relator,

vs.

W. Peyton Company,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed September 15, 2025
Affirmed
Wheelock, Judge**

Department of Employment and Economic Development
File No. 50222905-3

Jennifer Esposito, Hopkins, Minnesota (pro se relator)

W. Peyton Company, Edina, Minnesota (respondent employer)

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

Considered and decided by Wheelock, Presiding Judge; Ross, Judge; and Connolly,
Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Relator challenges an unemployment-law judge's determination that she committed
employment misconduct and that she must return unemployment benefits she received,

arguing that she did not commit employment misconduct and that the findings of the unemployment-law judge (ULJ) are not supported by the record. We affirm.

FACTS

Respondent W. Peyton Company (Great Clips) terminated relator Jennifer Esposito's employment after she arrived late to work on multiple occasions without a valid excuse. Esposito has health conditions that frequently caused her to be late for, or absent from, scheduled work, which incidents of tardiness or absence Great Clips excused. However, Great Clips terminated Esposito's employment on December 21, 2023, for unexcused incidents of tardiness and early departures.

After Great Clips terminated Esposito's employment, she applied for unemployment benefits with respondent Minnesota Department of Employment and Economic Development (DEED), which initially determined that Great Clips did not discharge Esposito for employment misconduct and that Esposito was therefore eligible for unemployment benefits. But Great Clips appealed DEED's determination, and the matter was scheduled for a telephone hearing before a ULJ. Esposito's notice of hearing stated that, "[i]f the [ULJ's] decision holds you ineligible for benefits that have already been paid, you will be overpaid. Overpaid benefits must be repaid and may be recovered by legal action." Esposito and Great Clips' relevant HR director, A.B., appeared for Esposito's telephone hearing. The following factual summary is based on the testimony and exhibits received at that hearing.

A.B. began her testimony by explaining that Esposito was not excused for being late for work on three occasions in October and November 2023. First, on October 27, Esposito

needed to pick up a new hair clipper and claimed that, upon her arrival at the supply warehouse, she discovered that the supplier had made a mistake in her order, causing her to be delayed. A.B. testified that Esposito texted her “team 41 minutes after her shift started,” explaining that she would be late. Second, on November 21, Esposito was late because she slept through her alarm. Third, on November 22, Esposito was late because her alarm did not sound.

A.B. testified that, on each of these occasions, Esposito informed Great Clips of the time she would arrive but then arrived significantly later than when she had estimated. Due to these “reliability issues,” Great Clips gave Esposito a “final warning” on November 23; yet Esposito proceeded to leave work early on December 7 without permission. Finally, on December 19, Esposito asked to start her shift at 12:30 rather than 12:00 because her cat was sick. At almost 1:00 that day, management checked in with Esposito regarding whether she had arrived. Esposito had not arrived yet, but she arrived by 1:17.

A.B. testified that, throughout October and November, “there were multiple discussions, verbal discussions that happened” between Great Clips and Esposito about her timeliness. However, A.B. confirmed that Esposito’s only written warning was posted on Esposito’s Paylocity account. Paylocity is a payment application accessible via mobile phone; A.B. testified that “Paylocity is our means of communication within the company.” A.B. also provided that the expectation for when an employee cannot make a shift is for the employee to alert a manager via phone call or text before the shift starts. A.B. further explained that, “in most cases, we do ask that people find somebody else to work their shift.” Finally, she provided that, “[a]nytime that you just don’t show up for a shift and

don't alert the manager, that's considered a 'no call, no show,' and that could lead to . . . termination of your position."

A.B. shared that Esposito "was great when she was" at work and confirmed that there were no other reasons for her "discharge other than attendance and reliability." A.B. testified that Great Clips excluded from the reasons for Esposito's termination the "numerous other dates" when Esposito had communicated that she was sick or her absence was accompanied by a doctor's note.

Esposito explained to the ULJ that, on December 7, she departed from work early to meet some movers she had hired. Esposito testified that the movers arrived at her residence earlier than she anticipated they would. She maintained that a coworker who was "not really technically a manager" permitted her to depart early.

The ULJ concluded that Great Clips discharged Esposito for employment misconduct and that Esposito had received an overpayment of unemployment benefits from DEED in the amount of \$1,230. The ULJ based their findings of fact on Esposito's and A.B.'s testimony, crediting A.B.'s testimony over Esposito's where their accounts diverged because "[A.B.]'s testimony . . . was more specific and supported by business records."

Esposito appeals.

DECISION

Esposito argues that she should not be required to repay the unemployment benefits that she received, maintaining that she did not engage in employment misconduct. She also challenges two of the ULJ's factual determinations, arguing that the ULJ erroneously

found that she overslept on two days—November 21 and 22—and that the ULJ erroneously recounted how long it took her to pick up her replacement clipper. DEED argues that substantial evidence supports the ULJ’s findings and that Great Clips terminated Esposito for employment misconduct.

The Minnesota Unemployment Insurance Law (MUIL), Minn. Stat. §§ 268.001-.23 (2024), establishes and governs Minnesota’s unemployment insurance program. This court may affirm, remand, reverse, or modify a ULJ’s decision under the MUIL “if the substantial rights of the petitioner may have been prejudiced.” Minn. Stat. § 268.105, subd. 7(d). Subdivision 7(d) further provides that a petitioner’s substantial rights may be prejudiced if the ULJ’s decision was

- (1) a violation of constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the department;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by substantial evidence in view of the hearing record as submitted; or
- (6) arbitrary or capricious.

Id. “We review de novo a ULJ’s determination that an applicant is ineligible for unemployment benefits. And we review findings of fact in the light most favorable to the ULJ’s decision and will rely on findings that are substantially supported by the record.” *Fay v. Dep’t of Emp. & Econ. Dev.*, 860 N.W.2d 385, 387 (Minn. App. 2015) (quotation omitted). Appellate courts defer to a ULJ’s credibility determinations. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Appellate courts review de novo whether an act or acts committed by an employee constitute employment misconduct. *Id.* Minnesota Statutes section 268.095, subdivision 6(a), defines employment misconduct as “any intentional, negligent, or indifferent conduct, on the job or off the job, that is a serious violation of the standard of behavior the employer has the right to reasonably expect of the employee.” Whether an employee’s absenteeism amounts to employment misconduct depends on the circumstances of the case. *Stagg v. Vintage Place*, 796 N.W.2d 312, 316-17 (Minn. 2011) (holding that employee discharged for excessive absenteeism and tardiness committed employment misconduct).

Esposito argues that the ULJ erroneously found that she did not have a valid excuse for her tardiness on both November 21 and 22. DEED argues the contrary. A.B. testified that Esposito was late on November 21 because she slept through her alarm. A.B. also testified that Esposito was late on November 22 because her alarm did not sound.

The ULJ based its findings of fact on Esposito’s and A.B.’s testimony, crediting A.B.’s testimony over Esposito’s when their accounts diverged. Moreover, A.B. submitted two screenshots of text messages from Esposito on November 21 and 22 in which Esposito stated, respectively, that she slept through her alarm and that her “alarm didn’t go off at all.” Because evidence in the record supports the ULJ’s findings, we reject Esposito’s argument that the ULJ erred in making them.

Esposito also argues that the ULJ erroneously recounted how long it took her to get a replacement clipper on October 27. She claims that when her “clipper broke in the middle of [her] shift [she] borrowed a co-worker’s clipper until she was able to get a replacement

order placed and ready for pick up at the warehouse the following morning.” During the telephone hearing with the ULJ, Esposito testified that she thought her clipper broke one or two days before she went to the warehouse. Despite receiving no contrary evidence on the point, the ULJ found that Esposito’s clipper had been broken for “several” shifts.

Because it is not clear whether the ULJ’s finding is inconsistent with the evidence, we assume, without deciding, that ULJ’s finding is not substantially supported by the record. Even so, Esposito has not shown that any error affected her substantial rights. This court “may reverse or modify the decision [of a ULJ] if the substantial rights of the petitioner may have been prejudiced.” Minn. Stat. § 268.105, subd. 7(d). Although the ULJ erroneously found that Esposito’s clipper had been broken for several shifts, this finding did not weigh heavily in the ULJ’s employment-misconduct determination. Rather, the ULJ referenced this incident as one out of at least five incidents of tardiness or absence that could have been prevented or mitigated through planning.

Esposito argues that the ULJ erroneously found that she committed employment misconduct because “[e]very single tardiness or absence was unpreventable and unforeseen.”

In their decision, the ULJ observed that “Great Clips has a reasonable expectation that employees come to work when scheduled, absent an emergency or compelling reasons, and communicate about missed work.” The ULJ identified at least five instances of unexcused early departures or late arrivals to work:

- late for work on October 27 due to not having clippers;
- late for work on November 21 due to missing her alarm;
- late for work on November 22 due to missing her alarm;

- absent at the end of her shift because she left work early on December 7 to meet with movers; and
- late for work on December 19 because her cat was sick.

Because evidence in the record supports the ULJ's findings and unexcused absences can constitute employment misconduct, we conclude that the ULJ properly determined that Great Clips discharged Esposito for employment misconduct.

An employee who is discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1). When there is a determination that an applicant is ineligible for unemployment benefits for periods the applicant has been paid benefits, there is an overpayment of those unemployment benefits. Minn. Stat. § 268.101, subd. 6. Applicants must repay any "overpayments" they receive:

Any applicant who (1) because of a determination or amended determination issued under section 268.07 or 268.101, or any other section of this chapter, or (2) because of an unemployment law judge's decision under section 268.105, has received any unemployment benefits that the applicant was held not entitled to, is overpaid the benefits, and must promptly repay the benefits to the trust fund.

Minn. Stat. § 268.18, subd. 1; *see also Appelhof v. Comm'r of Jobs & Training*, 450 N.W.2d 589, 591-92 (Minn. App. 1990) (concluding that a "subsequent determination which denies benefits already paid is considered an overpayment, subject to Minn. Stat. § 268.18," and therefore the relator was "required to repay the benefits he erroneously received").

The ULJ concluded that Great Clips discharged Esposito due to employment misconduct. The ULJ reasoned that Esposito's unexcused late arrivals to and early departures from work on October 27, November 21, November 22, December 7, and

December 19 were “preventable with planning” and “could have been avoided or expected.” The ULJ observed that “Great Clips has a reasonable expectation that employees come to work when scheduled, absent an emergency or compelling reasons, and communicate about missed work.” The ULJ thus determined that Esposito received \$1,230 in overpayment of unemployment benefits.

Esposito argues that she should not have to repay the overpayment because it “feels cruel.” While we acknowledge that Esposito has faced challenges due to her health conditions and unexpected personal events, she provides no legal authority upon which this court could waive her overpayment. Arguments “based on mere assertion and not supported by any argument or authorities in appellant’s brief [are] waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.” *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971). And “[t]here is no equitable or common law denial or allowance of unemployment benefits.” Minn. Stat. § 268.069, subd. 3. Therefore, the ULJ did not err in ordering Esposito to return her overpayment.

Affirmed.