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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1854**

Trenton Fulghum,
Relator,

vs.

Horizon Equipment, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 21, 2025
Reversed
Harris, Judge**

Department of Employment and Economic Development
File No. 50560763-5

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Horizon Equipment, LLC, Londonderry, New Hampshire (respondent employer)

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Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and Harris,
Judge.

NONPRECEDENTIAL OPINION

HARRIS, 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 because he was discharged for employment misconduct. He argues that (1) the ULJ erred by declining to apply the mental-illness exception to ineligibility based on misconduct, and (2) the ULJ's determination that he was discharged for aggravated employment misconduct is not supported by substantial evidence. Because we conclude the ULJ's determinations that relator was discharged for employment misconduct and aggravated employment misconduct were not supported by substantial evidence, we reverse.

FACTS

The following facts are drawn from the testimony and exhibits in the record before the ULJ. Relator Trenton Fulghum worked as an equipment specialist for respondent Horizon Equipment, a food service equipment dealer, from May 2023 to April 12, 2024. When employed by Horizon, Fulghum had been diagnosed with major depressive disorder and generalized anxiety disorder. Since his discharge, he has also been diagnosed with bipolar disorder.

On April 8, 2024, Fulghum was experiencing mental-health symptoms and began drinking alcohol at approximately "5:30 or 6:00 p.m." and continued drinking until 1:00 a.m. During that time, he drank approximately three-quarters of a 1.75-liter bottle of vodka. Sometime between 2:00 a.m. and 3:00 a.m. on April 9, Fulghum got in his car and drove around St. Paul. He drove because he "was going back and forth" on whether he

“was going to go through with escaping and going off the grid,” and considered driving north to be “in the middle of nowhere.” He was not intending to commit suicide. Four hours later, he struck a parked car in a residential driveway, drove away from the scene, and crashed into the batting cages of a nearby baseball field.

When police responded to the scene, Fulghum was arrested after he failed field sobriety tests and, according to a breathalyzer test, his alcohol concentration was 0.10. Fulghum was incarcerated from April 9-11, 2024, and he later pleaded guilty to gross-misdemeanor driving while impaired (DWI). He missed work due to his incarceration.

On April 9, Horizon Equipment contacted Fulghum’s brother about Fulghum’s absence. The brother said Fulghum was absent because he was sick. After being released from incarceration on April 11, Fulghum told Horizon Equipment that he had been arrested for driving while impaired and missed work because of incarceration. The following day, Horizon Equipment notified Fulghum that he was discharged from employment for “being a no call, no show.”

Fulghum applied for unemployment benefits with respondent Minnesota Department of Employment and Economic Development (DEED). DEED determined he was ineligible for benefits because he was discharged for failing to notify his employer of his absence from work and that failure was employment misconduct.

Fulghum appealed to a ULJ, who held a telephone hearing, at which Fulghum and his brother testified. Fulghum explained the events that led to his discharge and testified that he was experiencing “major depressive disorder” on the evening of April 8. Horizon Equipment did not participate in the hearing before the ULJ.

The ULJ issued a written decision, finding that Fulghum was discharged for employment misconduct and therefore ineligible to receive employment benefits.

Fulghum requested reconsideration of the ULJ's determination. The ULJ determined that an additional evidentiary hearing was necessary to determine whether Fulghum was discharged due to employment misconduct or aggravated employment misconduct. It also ordered Horizon Equipment to submit a letter stating the reasons for the discharge. An evidentiary hearing was held by telephone, at which Fulghum testified that when he started drinking that evening, he was experiencing manic symptoms. At some point, his state of mania swung into a state of depression with suicidal thoughts.¹ Horizon Equipment did not participate or submit a letter explaining the discharge.²

Fulghum also submitted to the ULJ two letters from a mental-health therapist with whom he began working on April 23. In the first letter, the therapist stated that Fulghum has been diagnosed with major depressive disorder and that Fulghum described his mental-health symptoms, including "depressed mood, sleeping issues, feelings of helplessness and hopelessness, irritability, racing thoughts, issues with concentration, and suicidality." In the second letter, the therapist stated that "it was evident that [Fulghum] had been struggling significantly with his mental health for some time" and that he used alcohol

¹ Fulghum also testified that he was charged with a separate DWI in November 2023. And in February 2024, Fulghum missed approximately three days of work because of his mental-health conditions. At that time, he had "[m]ajor depressive disorder and generalized anxiety." He informed his employer that he would "be going to a doctor to get [his] . . . medication adjusted."

² Horizon Equipment also has not participated in this appeal.

“[a]s a coping mechanism” to alleviate his mental-health symptoms, which in turn, fueled his mental-health struggles. She opined that the “cycle of substance abuse and mental health fed off one another and that is what ultimately led to him operating a vehicle under the influence.”

The ULJ issued a written decision determining that Fulghum was ineligible for unemployment benefits because he was discharged for employment misconduct and that the conduct was not a consequence of his mental illness. The ULJ also concluded that Fulghum was discharged for aggravated employment misconduct, noting that Fulghum “committed gross-misdemeanor-level driving under the influence . . . and it had a significant adverse effect on the employment.”

Fulghum again requested reconsideration, and the ULJ affirmed the decision. Fulghum appeals by writ of certiorari.

DECISION

Fulghum challenges the ULJ’s decision that he is ineligible for unemployment benefits. An employee who is discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2024). Employment misconduct is “any intentional, negligent, or indifferent conduct . . . 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). But “conduct that was a consequence of the applicant’s mental illness or impairment” is not employment misconduct. *Id.*, subd. 6(b)(1) (2024).

Whether an employee committed employment misconduct that disqualifies them from unemployment benefits is a mixed question of law and fact. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). On review of a ULJ decision, we defer to the ULJ's credibility determinations and uphold the ULJ's findings of fact if supported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d)(5) (2024); *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016). Substantial evidence is relevant evidence that a "reasonable mind might accept as adequate to support a conclusion, or more than a scintilla of evidence." *Moore Assocs., LLC v. Comm'r of Econ. Sec.*, 545 N.W.2d 389, 392 (Minn. App. 1996). We review de novo whether the facts found by the ULJ constitute employment misconduct. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). We may affirm the ULJ's decision or remand for further proceedings, or we may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the ULJ's

findings, inferences, conclusions, or decisions are (1) in 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.

Minn. Stat. § 268.105, subd. 7(d) (2024).

I. The ULJ’s determination that the mental-illness exception does not apply to Fulghum’s conduct is not supported by substantial evidence.³

Fulghum first argues that the ULJ’s determination that the mental-illness exception to the definition of employment misconduct did not apply was unsupported by substantial evidence. We agree.

As an initial matter, we note that employers have the right to establish and enforce reasonable rules governing employee attendance. *Wichmann v. Trivalia*, 729 N.W.2d 23, 28 (Minn. App. 2007). An employee who fails to follow an employer’s reasonable attendance policy commits employment misconduct. *Stagg*, 796 N.W.2d at 317. And absence due to incarceration may also constitute misconduct. *Jenkins v. Am. Exp. Fin. Corp.*, 721 N.W.2d 286, 290 (Minn. 2006). Absence from work due to incarceration is not misconduct that will disqualify an employee on a per se basis from establishing eligibility for receipt of unemployment compensation. *Id.* at 287. Fulghum asserts that his conduct does not constitute employment misconduct because his actions were the consequence of his mental illness.⁴

“[C]onduct that was a consequence of the applicant’s mental illness or impairment” is an exception from the definition of “employment misconduct.” Minn. Stat. § 268.095,

³ Fulghum also argues that the ULJ’s credibility finding as to his testimony is not supported by substantial evidence. Because the un rebutted evidence establishes that Fulghum’s conduct was a consequence of his mental illness, we need not address the ULJ’s credibility findings regarding Fulghum’s conduct prior to his driving after consuming alcohol.

⁴ The parties’ briefing also discuss a separate exception to the employment misconduct definition—the substance-use-disorder exception. It is undisputed that this exception does not apply here.

subd. 6(b)(1). A “consequence” is a “result that follows as an effect of something that came before.” *Black’s Law Dictionary* 383 (12th ed. 2024) (defining consequence).

A ULJ’s credibility determination “must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1a(a) (2024). This statutory requirement is met when the ULJ makes a “basic finding that [it] did not find specific testimony by the relator credible.” *Wichmann*, 729 N.W.2d at 29. This requirement is not met when “credibility was central to the decision” and the ULJ makes no basic findings about credibility, and “never address[es] credibility.” *Id.*

The ULJ made several factual findings that are consistent with the record, including that: Fulghum suffered from bipolar and generalized anxiety disorders; he self-medicated his symptoms of mental illness with alcohol; on the evening of April 8, Fulghum experienced a state of mania that swung into a state of depression after drinking vodka; and Fulghum began driving while he was under the influence of alcohol because he wanted to escape.

But the ULJ’s finding that “[t]he credible evidence does not support a finding that Fulghum’s conduct in driving a vehicle while under the influence of alcohol was a consequence of mental illness or impairment” is not supported by the entire record.⁵ In addition to his testimony, Fulghum provided two letters from his therapist as evidence that

⁵ Fulghum also asserts that the ULJ’s finding misstates the law because under Minn. Stat. § 268.095, subd. 6(b)(1), the ULJ should analyze how mental-health disorders affect the specific applicant, not how mental-health disorders function in general. Although the ULJ may have used less than precise language, it is apparent the ULJ did consider Fulghum’s mental-illness symptoms.

his conduct was a consequence of his mental illness. In the first letter, the therapist stated that Fulghum has been diagnosed with major depressive disorder and described the symptoms that Fulghum reported experiencing. In the second letter, the therapist wrote the following:

As a coping mechanism, [Fulghum] turned to alcohol in an attempt to lessen his mental health symptoms. Despite his turn to alcohol for comfort the alcohol only fueled his mental health struggles, which then in turn made [Fulghum] drink more. Unfortunately, I believe that this cycle of substance abuse and mental health fed off one another and that this is what ultimately led to him operating a vehicle under the influence.

The ULJ did not discuss these letters in her decision. In reviewing the ULJ's findings, it is apparent that credibility determinations were central to the ULJ's decision.

We have not found evidence in the record that discredits the therapist's opinions. In fact, Fulghum testified consistent with his therapist's letters that he is diagnosed with a mental illness, that he was experiencing mental-health symptoms on April 8, that he drank alcohol, and that his mental-health issues caused him to drive after drinking. Because credibility was central to the ULJ's decision and the therapist's letters have not been discredited, we conclude that the ULJ's finding is unsupported by the record.

Fulghum relies on two cases to support his assertion that the mental-illness exception applies when there is a traceable consequential connection between an applicant's mental illness and the conduct that led to the applicant's discharge. In *Cunningham v. Wal-Mart Assocs., Inc.*, this court concluded that an employee's conduct of missing work, not calling his employer to report his absences, and related performance problems, were a consequence of his mental impairment. 809 N.W.2d 231, 233 (Minn. App. 2011). In that case, the employee was struggling to meet the employer's performance

expectations because he had difficulty with comprehension and multitasking after suffering four strokes. *Id.* The employer told the employee to write an action plan explaining what he could do differently to meet the expectations and to “come in on [his] next scheduled shift with [his] action plan.” *Id.* at 236. The employee did not write the action plan, did not appear for his next five shifts, and did not call to report his absence. *Id.* at 234. The employer discharged him for job abandonment. *Id.* In reversing the ULJ’s decision, we noted the record demonstrated that the employee had memory and concentration problems, that he informed the employer that his performance issues were related to his condition, and that the employee did not write the action plan because he “did not believe there were any reasonable steps he could take to correct his performance problems.” *Id.* at 236 (quotations omitted).

In the nonprecedential opinion, *Skottegaard v. Comcast Cablevision Corp.*, this court reversed a ULJ decision and concluded that the mental-illness exception applied to an employee’s conduct of failing to report to work or call in after she overslept. No. A11-2130, 2012 WL 3792297, at *4 (Minn. App. Sept. 4, 2012); *see also* Minn. R. Civ. App. P. 136.01, subd. 1(c) (stating nonprecedential cases may be cited for persuasive authority). The employee suffered from anxiety, depression, and post-traumatic stress disorder. *Id.* at *2. A letter from her therapist opined that her illness was not the “per se” cause of her conduct, but that she avoided circumstances that caused anxiety, which was a reaction to her anxiety. *Id.* at *3. We concluded that, under the broad language of the mental-illness exception, the employee’s conduct was a consequence of her mental illness or impairment. *Id.* at *4.

We are persuaded by this court’s analysis in *Cunningham* and *Skottegaard*. Like the employees in each case, Fulghum is diagnosed with mental illnesses that contributed to his act of drinking and driving. And, like the record in *Skottegaard*, the record here includes Fulghum’s therapist letter opining that the “cycle of substance abuse and mental illness . . . ultimately led to him operating a vehicle under the influence.” Fulghum has demonstrated that his conduct of driving after drinking alcohol was the consequence of his mental illness.

To convince us otherwise, DEED asserted at oral argument that Fulghum’s conduct was too attenuated from his mental illness for us to conclude that the mental-illness exception applies. In doing so, DEED relies on *Icenhower v. Total Auto., Inc.*, where the employee was discharged from employment after she reported her attention-deficit disorder (ADD) medication was stolen at work, alleged another employee stole it, and lied during the subsequent investigation. 845 N.W.2d 849, 851 (Minn. App. 2014), *rev. denied* (Minn. July 15, 2014). We concluded that the mental-illness exception did not apply to the employee’s conduct because “no record evidence shows that ADD causes a person to lie.” *Id.* at 857. The record contained the employee’s testimony admitting that she lied, that she “did not have a good reason” for the lie, and that she was not on her ADD medication at the time. *Id.* (quotations omitted). DEED contends that *Icenhower* is factually similar to this case. We disagree. Here, *Icenhower* is factually distinguishable because the therapist’s letters are strong evidence that the link between Fulghum’s conduct and his mental illness is not tenuous.

In sum, because there is sufficient un rebutted evidence that Fulghum’s conduct was a result of his mental illness, we conclude that Fulghum’s conduct was a consequence of his mental illness, and the mental-illness exception applies.

II. The ULJ erred by concluding that Fulghum was discharged for aggravated employment misconduct.

Aggravated employment misconduct is “any act . . . that would amount to a gross misdemeanor or felony . . . [that] had a significant adverse effect on the employment.” Minn. Stat. § 268.095, subd. 6a(a) (2024). It is presumed that a person committed the act in question if they are convicted of a gross misdemeanor or felony. *Id.* No exceptions apply to the definition of aggravated employment misconduct. *See id.*, subd. 6a(c) (2024) (“The definition of aggravated employment misconduct provided by this subdivision is exclusive and no other definition applies.”). When it is determined that an employee was discharged for aggravated employment misconduct, the employee’s wage credits from employment are also canceled, in addition to being ineligible to receive unemployment benefits. *Id.*, subd. 10(a), (c) (2024).

The ULJ concluded that Fulghum was discharged for aggravated employment misconduct, reasoning that:

although the employer did not give testimony about whether the criminal conduct was part of the reason for the discharge, the evidence of the timing of events shows that the criminal conduct most likely was part of the reason for the discharge, as Horizon Equipment did not decide to discharge Fulghum until after the employer had learned the true reason Fulghum had been absent from April 9-11.

Fulghum concedes that his gross-misdemeanor conduct constitutes aggravated employment misconduct, but nevertheless argues that the record does not support a conclusion that the employer discharged him for the DWI. We agree that the record does not support the ULJ's conclusion.

“To disqualify a person from receiving benefits, the misconduct must be the cause of the discharge.” *Hansen v. C.W. Mears, Inc.*, 486 N.W.2d 776, 780 (Minn. App. 1992) (analyzing a prior statutory scheme of unemployment benefits and concluding gross misconduct was not the stated reason for discharge), *rev. denied* (Minn. July 16, 1992). And “[t]he character of the termination is determined at the time of the termination.” *Id.*

We are persuaded by this court's analysis in *Leuze v. Minn. Valley Alfalfa Producers*, where we reversed a ULJ's aggravated-misconduct determination when the only reason provided by the employer for the discharge was absence from work. No. A20-0031, 2020 WL 4743505, at *6 (Minn. App. Aug. 17, 2020). Although the employee missed work because he was incarcerated, the employer was unaware of the employee's incarceration at the time of the discharge. *Id.*

According to Fulghum's undisputed testimony, the only reason given by Horizon Equipment for his discharge was for “no call, no show.” Although Fulghum told Horizon Equipment that he was incarcerated and he was discharged the following day, Horizon Equipment never participated in the ULJ proceedings to explain its decision. On this record, there is not substantial evidence to support that Fulghum's gross-misdemeanor charge was the *cause* of his discharge. Mere absence from work, without more, does not constitute aggravated employment misconduct. *See* Minn. Stat. § 268.095, subd. 6a(a).

In sum, because the record evidence demonstrates that Fulghum was discharged for conduct that was a consequence of his mental illness, under Minn. Stat. § 268.095, subd. 6(b)(1), he did not commit employment misconduct. And the record does not demonstrate that Fulghum was discharged for aggravated employment misconduct under Minn. Stat. § 268.095, subd. 6a(a). Accordingly, the ULJ erred by determining that Fulghum was ineligible for unemployment benefits.

Reversed.