

*This opinion is nonprecedential except as provided by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
A25-0816**

Cassie McDuffie,
Relator,

vs.

Association of Minnesota Public Educational Radio Stations, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed February 17, 2026
Affirmed
Bratvold, Judge**

Department of Employment and Economic Development
File No. 51330662-3

Carissa McDuffie, St. Paul, Minnesota (pro se relator)

Association of Minnesota Public Educational Radio Stations, Inc., Mendota Heights,
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 Schmidt, Presiding Judge; Bratvold, Judge; and Bentley,
Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Relator challenges a determination by an unemployment-law judge (ULJ) that she was ineligible for unemployment benefits because she was discharged for employment misconduct. Relator argues that (1) the ULJ's finding of employment misconduct was unsupported by substantial evidence and based on legal error and (2) the ULJ erred in failing to call a witness during the hearing and in denying relator's request for reconsideration. We affirm.

FACTS

The following summarizes the ULJ's written factual findings along with the record evidence relevant to the issues on review.

Relator Carissa McDuffie worked as a production coordinator at respondent Association of Minnesota Public Educational Radio Stations (employer). Her position was remote, but some meetings and events required in-person attendance. McDuffie worked for her employer from October 23, 2023, until December 6, 2024, when she was discharged. The ULJ found that McDuffie was discharged because she was "repeatedly late for work meetings and events without notice to [employer], despite multiple warnings about the importance of punctuality and of communicating when she was going to be late."

After being discharged, McDuffie applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) determined that McDuffie was ineligible for unemployment benefits. McDuffie appealed DEED's

determination and represented herself at an evidentiary hearing before a ULJ. The chief executive officer (CEO) appeared at the hearing on employer's behalf.

During the hearing, CEO testified to seven times when McDuffie was late for meetings or work assignments between October 24, 2023, and November 21, 2024.¹ CEO testified that McDuffie did not communicate in advance that she would be late and "that was one of the big problems we had . . . there was no communication." The ULJ credited CEO's testimony and found McDuffie was tardy in all seven instances.

In her testimony, McDuffie admitted to being late in five of these instances and was asked to explain why.² Discussing the October 24, 2023 incident, she testified there was "really no excuse for . . . the tardiness." McDuffie testified that she did not remember why she was late on May 2, 2024, other than "just timeliness." As to her late arrival to an in-person shift at a Minnesota State Fair booth on August 27, 2024, McDuffie testified that she could have been on time but "didn't have an idea [she] had to leave so early to make sure to get to the actual location in time" and agreed she did not notify her supervisor until after her scheduled start time. Discussing the incident on November 5, 2024, McDuffie testified, "I admit I was late. It probably was on my calendar . . . I was absolutely late

¹ The dates of the seven instances were October 24, 2023, May 2, 2024, May 22, 2024, August 27, 2024, September 4, 2024, November 5, 2024, and November 21, 2024.

² McDuffie testified that, on May 22, 2024, she "was actually on time" but that she "had to wait for one of [her] colleagues to come through two sets of secured doors to come and let [her] in." McDuffie also testified that she did not recall an incident in which she was late to a virtual meeting on September 4, 2024, but agreed that she "got an email warning [her] about tardiness September 5th."

and . . . I take responsibility for it.” Finally, McDuffie testified that she was “late by a couple of minutes” to a meeting on November 21, 2024.

Employer gave McDuffie written and verbal warnings. In response to McDuffie’s first instance of tardiness, on October 24, 2023, CEO sent McDuffie a letter warning that “missing or showing up late for a meeting without letting your supervisor know you are going to be late is not acceptable. If this happens again in the future, you will face disciplinary action up to and including the possibility of the termination of your employment.”

CEO gave McDuffie a verbal warning and reminder about timeliness after she was late to a meeting on May 22, 2024. CEO emailed McDuffie on September 5, 2024, stating, “I need to impress upon you once again the importance of being on time for shifts and meetings We expect employees to arrive at all meetings a few minutes before they are scheduled so that they can begin on time. If you are going to be late for any reason you need to let me know in advance.” On November 5, 2024, CEO emailed McDuffie, “I need just a few minutes of your time to talk about being late to today’s meeting.” McDuffie responded, “I would like to chat tomorrow,” then followed up, “Unless I’m being fired, then I’d like to talk tonight.”

CEO testified that during a “verbal meeting” after the November 5 email, he “stressed to [McDuffie] the importance that we use Outlook as our source of meetings and that she needs to be checking those meetings” and that he “asked repeatedly if there was any accommodation or anything we should know going on in her life and she said no.”

After the hearing, the ULJ determined that “McDuffie was discharged because of employment misconduct and is not eligible for unemployment benefits.” The ULJ found that the “credible evidence shows [employer] clearly communicated its expectation” for punctuality and “timely notice” of lateness, “yet McDuffie repeatedly was late for or missed meetings . . . without communicating that she was going to be late.”

McDuffie requested reconsideration of the ULJ’s decision, stating that her “witness was never called and was waiting and available” during the evidentiary hearing. McDuffie argued that the witness would bolster McDuffie’s credibility by clarifying what the ULJ referred to as “inconsistent and illogical statements between my opening (written) and closing (verbal) statements.”

The ULJ denied McDuffie’s request for reconsideration, concluding that she had “not shown good cause for failing to present the additional evidence from her witness during the hearing” and had “not provided any information or arguments that require changing the decision or ordering another hearing.”

McDuffie petitioned for certiorari review.

DECISION

In reviewing the ULJ’s denial of unemployment benefits, this court may affirm the ULJ’s decision or remand for further proceedings. Minn. Stat. § 268.105, subd. 7(a) (2024). This court “may reverse or modify the decision if the substantial rights of the [relator] may have been prejudiced because the findings, inferences, conclusion, or decision” is

- (1) in violation of constitutional provisions;
- (2) in excess of [DEED’s] statutory authority or jurisdiction . . . ;

- (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.

I. The ULJ did not err in concluding that employer discharged McDuffie for employment misconduct.

An applicant who is discharged for employment misconduct generally is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2024). Employment misconduct is “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) (2024). “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). But employment misconduct does not include

- (2) conduct that was a consequence of the [employee’s] inefficiency or inadvertence;
- (3) simple unsatisfactory conduct;
- (4) conduct an average reasonable employee would have engaged in under the circumstances;
- (5) conduct that was a consequence of [employee’s] inability or incapacity; [or]
- (6) good faith errors in judgment if judgment was required[.]

Minn. Stat. § 268.095, subd. 6(b)(2)-(6) (2024).

“Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law.” *Stagg v. Vintage Place Inc.*,

796 N.W.2d 312, 315 (Minn. 2011). Appellate courts “review the ULJ’s factual findings in the light most favorable to the decision and should not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them. *Id.* (quotation omitted). And “whether a particular act constitutes disqualifying misconduct is a question of law that [appellate courts] review de novo.” *Id.*

McDuffie contends that the ULJ erred in finding that she was discharged for employment misconduct because (1) the decision is not supported by substantial evidence and (2) her “actions do not rise to the level of misconduct under Minn. Stat. § 268.095.”³

A. Substantial evidence supports the ULJ’s decision.

McDuffie contends that the ULJ’s order was not supported by substantial evidence. McDuffie also argues that the “ULJ’s decision rests largely on vague email references . . . and inconsistent testimonies” and that there are “little to no timestamped records, no formal evaluations or documented disciplinary steps.”

Substantial evidence is, among other things, “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Dourney v. CMAK Corp.*, 796 N.W.2d 537, 539 (Minn. App. 2011) (quotation omitted). We therefore consider the grounds for the ULJ’s decision, starting with credibility.

The ULJ’s written decision explains that the “findings of fact are based primarily on the written submissions from [employer] and [CEO’s] testimony, which was credible

³ McDuffie also contends that employer “failed to implement and communicate clear workplace policies or disciplinary procedures.” We discuss this argument along with our analysis of the employer’s reasonable expectations.

because it was detailed and consistent.” The ULJ also found that “McDuffie’s testimony was not credible because it was illogical and inconsistent.” The ULJ explained her credibility determination in detail.

McDuffie claimed that [CEO’s] behavior and being short-staffed were the causes of her tardiness, but she explained no logical connection between what [CEO] was saying or doing and McDuffie’s failures to check her Outlook calendar and/or set reminders for herself for when meetings were scheduled, nor did she explain how [employer] being short-staffed would cause McDuffie to be late to her shift for the State Fair or other work events. The credible evidence shows that while meetings were sometimes rescheduled, the reschedules were communicated to McDuffie via Outlook calendar event invitations. McDuffie gave no credible explanation for why she could not use Outlook calendar and other tools, such as reminders on her phone, to help herself keep track of when she had work appointments.

When a witness’s credibility “has a significant effect on the outcome of a decision,” the ULJ must give a reason for the credibility determination. Minn. Stat. § 268.105, subd. 1a(a) (2024). The ULJ did so here. This court will not second-guess a ULJ’s credibility determination. *Bangtson v. Allina Med. Grp.*, 766 N.W.2d 328, 332 (Minn. App. 2009). This court also defers to the ULJ’s weighing of conflicting evidence and “may not weigh that evidence on review.” *Whitehead v. Moonlight Nursing Care, Inc.*, 529 N.W.2d 350, 352 (Minn. App. 1995).

The ULJ’s finding that CEO’s testimony was credible is supported by exhibits documenting McDuffie’s tardiness and employer’s responses, McDuffie’s admission that she was late five times, and records of McDuffie’s responses to email warnings about

tardiness. Timestamped records are not required to prove McDuffie’s repeated tardiness and failures to communicate, most of which she admits.

Nor is a formal evaluation of McDuffie’s performance necessary to satisfy substantial-evidence review because her discharge was not based on her job performance. And employer’s disciplinary steps were documented in three written warnings about her tardiness, her failure to communicate, and the need to change her behavior.⁴

Based on this record, and granting deference to the ULJ’s credibility determinations, we conclude that the ULJ’s findings were supported by substantial evidence.

B. McDuffie’s tardiness and failure to communicate with her employer was employment misconduct.

The ULJ found that employer communicated its expectation that McDuffie be on time and that “McDuffie’s conduct in being repeatedly late for or missing meetings and other work events was at least negligent and it amounted to a serious violation of reasonable expectations.” On review, McDuffie contends that the ULJ erred because her tardiness was not due to “indifference or gross neglect” but was “the natural result of erratic scheduling and unsustainable working conditions.”

“Whether an employee’s absenteeism and tardiness amounts to a serious violation of the standards of behavior an employer has a right to expect depends on the circumstances

⁴ McDuffie appears to claim that the May 22, 2024, instance of tardiness was unsupported by substantial evidence based on “screenshots of a text thread between” members of employer’s staff during “that very incident show that [McDuffie] was on time and waiting for entry into the highly secured building.” McDuffie first submitted the text-message screenshots in her request for reconsideration. Therefore, we consider this evidence in our discussion of the ULJ’s decision on reconsideration below.

of each case.” *Stagg*, 796 N.W.2d at 316. “[T]he focus of the inquiry is the employee’s conduct, not that of the employer.” *Id.* In *Stagg*, the supreme court determined that Stagg committed misconduct, in part because the employer “had an absenteeism and tardiness policy of which Stagg was aware and . . . Stagg was aware that he was expected to follow that policy.” *Id.* at 317; *see also Evenson v. Omnetic’s*, 344 N.W.2d 881, 883 (Minn. App. 1984) (concluding that “continued tardiness, combined with several warnings” supports a determination that an employee was discharged for misconduct).

As in *Stagg*, McDuffie was aware of employer’s policy against tardiness—employer’s October 25, 2023 letter and two emails in September and November 2024 addressed McDuffie’s tardiness and failure to communicate. *See* 796 N.W.2d at 316. Thus, substantial evidence supports the ULJ’s finding that “[employer] clearly communicated its expectation[s].” McDuffie failed to meet employer’s reasonable expectation seven times, such that she engaged in “continued tardiness, combined with several warnings.” *Evenson*, 344 N.W.2d at 883.

In *Stagg*, the supreme court stated that “unemployment compensation is paid only to those persons ‘unemployed through no fault of their own.’” 796 N.W.2d at 315 (quoting *Valenty v. Med. Concepts Dev., Inc.*, 503 N.W.2d 131, 134 (Minn. 1993)). While McDuffie identified challenges to timeliness due to her workload and frequent rescheduling, she also acknowledged her responsibility for being late and that she could have avoided being late with better planning.

McDuffie also argues that employer had no policy manual setting out its tardiness policy and the consequences for violating the policy. McDuffie contends that this weighs

against a finding of misconduct. We disagree. An employer may discharge an employee for misconduct “even though the employer has not enacted a policy that prohibits the behavior.” *Brisson v. City of Hewitt*, 789 N.W.2d 694, 697 (Minn. App. 2010). The ULJ therefore did not err in concluding that McDuffie’s conduct “amounted to a serious violation of reasonable expectations.”

Alternatively, McDuffie contends that her conduct fits exceptions to ineligibility based on employment misconduct, citing Minn. Stat. § 268.095, subd. 6(b)(2)-(6). McDuffie does not explain why her conduct fits these five exceptions. We understand McDuffie to argue under subdivision 6(b)(4) that she engaged in “conduct an average reasonable employee would have engaged in under the circumstances.”⁵ We disagree. In a persuasive opinion, this court concluded that “an average reasonable person” would

⁵ We conclude that other four exceptions in section 268.095, subdivision 6, that McDuffie cites do not apply here. Subdivision 6(b)(2) refers to an employee’s “inefficiency or inadvertence.” The record supports the ULJ’s finding that McDuffie “explained no logical connection” between a challenging work environment and her “failures to check her Outlook calendar and/or set reminders for herself,” showing that McDuffie’s misconduct was not because of inefficiency or inadvertence.

Subdivision 6(b)(3) excepts “simple unsatisfactory conduct,” which this court has said is “reserved for failures to meet basic job performance standards.” *Potter v. N. Empire Pizza, Inc.*, 805 N.W.2d 872, 877 (Minn. App. 2011), *rev. denied* (Minn. Nov 15, 2011). Tardiness is not a performance-related standard, so this exception does not apply.

Subdivision 6(b)(5) excepts “conduct that was a consequence of [employee’s] inability or incapacity.” The record supports the ULJ’s findings that McDuffie was able to comply with employer’s timeliness and attendance expectations: “McDuffie could have been on time . . . with better planning” for five events of tardiness, and with respect to calendar invitations McDuffie missed, “McDuffie knew how to use Microsoft Outlook and she knew how to set timed reminders both on Outlook and on her cell phone” and “gave no credible explanation for why she could not use [these] tools to help herself keep track of when she had work appointments.” Subdivision 6(b)(6) excepts “good faith errors in judgment if judgment was required.” Punctuality is not a matter of judgment, so this exception does not apply.

“carefully read[] her work schedule and mak[e] proper plans to arrive at the correct work location on time” and that failure to do so does not prevent a finding of employment misconduct for tardiness. *Staples v. Mem’l Blood Ctrs.*, No. A10-2119, 2011 WL 3557830, at *4 (Minn. App. Aug. 15, 2011).⁶ Similarly, we conclude that the average reasonable employee in McDuffie’s circumstances would have made plans to arrive on time or promptly communicate any delays with the employer. Thus, McDuffie fails to establish an exception to employment misconduct.

II. The ULJ conducted a fair hearing.

McDuffie contends that the ULJ “committed procedural error” in failing to call a witness on her behalf and argues that she “reasonably believed that referencing the witness would result in that person being called.” McDuffie also argues that the ULJ erred in denying her motion for reconsideration to reopen the record for testimony from the witness.

The procedural history is relevant to our analysis. In support of her request for reconsideration by the ULJ, McDuffie submitted a letter from her colleague. The letter stated, “I was prepared to serve as a witness during [McDuffie’s] hearing on February 5th; however, I was not called to testify.” In her request for reconsideration, McDuffie argued that the witness’s letter “reveal[s] crucial evidence.”

We first consider the evidentiary hearing and then discuss McDuffie’s request for reconsideration.

⁶ We cite this nonprecedential opinion as persuasive authority. Minn. R. Civ. App. P. 136.01, subd. 1(c). While this court in *Staples* reached this conclusion when analyzing the “simple unsatisfactory conduct” exception, it did so by addressing the reasonableness of the conduct. *Staples*, 2011 WL 3557830, at *4.

A. The ULJ followed lawful procedure during the evidentiary hearing.

This court may reverse a ULJ's decision if it is "made upon unlawful procedure." Minn. Stat. § 268.105, subd. 7(d)(3) (2024). The ULJ "must exercise control over the hearing procedure in a manner that protects the parties' rights to a fair hearing." Minn. R. 3310.2921 (2023). The ULJ "must ensure that all relevant facts are clearly and fully developed" and "must assist all parties in the presentation of evidence." *Id.* But "[t]his is not to say that a ULJ is the unrepresented party's advocate." *Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25, 32 (Minn. App. 2012).

In *Stassen*, this court determined that ULJ had followed lawful procedure when she "explained the hearing's procedure and purpose"; "questioned [the employer's] representatives and gave [the employee] the opportunity to cross-examine them"; asked the employee "if he had anything further to add to his testimony"; and "answered all of [the employee's] questions." *Id.* Here, the ULJ followed the same procedure for McDuffie and employer and ensured that both parties had access to the exhibits and an opportunity to object to them.

The ULJ gave McDuffie several opportunities to mention any witnesses. At the beginning of the hearing, the ULJ asked McDuffie, "Is anyone else going to be participating on your behalf?" McDuffie answered, "No." During preliminary instructions, the ULJ stated that "[e]ach party is allowed to ask questions of any witness, including their own," and that the "hearing is the only opportunity available to present testimony and other evidence on the issues." During testimony, McDuffie referred to a colleague who "was supposed to be my witness on this case" but did not call a witness. At the end of McDuffie's

testimony, the ULJ asked her, “Any other facts or details in general that you want me to know about that we’ve not covered yet?” McDuffie answered, “No.” In her closing argument, McDuffie again referred to her colleague, a “former supervisor” who “should have been [her] witness on this case.”

Given that McDuffie refers to a colleague who “should have been” her witness, McDuffie’s statement that there were no “other facts,” and McDuffie’s failure to call a witness, the ULJ conducted a fair hearing. The ULJ took affirmative steps to ensure a fair hearing, and McDuffie did not request to call a witness when prompted. Thus, the procedure was lawful.

B. The ULJ did not err in denying McDuffie’s request for reconsideration.

McDuffie contends that, even if the ULJ did not err in failing to call her colleague as a witness during the hearing, the ULJ “most certainly” should have granted McDuffie’s request for reconsideration so the witness could testify. In her request for reconsideration, McDuffie asserted that her witness’s testimony would have shown that McDuffie’s termination “was never about misconduct but about the erratic shifting of expectations, lack of organizational structure, and a leadership failure.” Along with her request for reconsideration, McDuffie also submitted “screenshots of a text thread” that, she argues, “show that [she] was on time and waiting for entry” to a meeting on May 22, 2024, contrary to the ULJ’s finding that she was late.

A ULJ “must order an additional hearing if a party shows that evidence which was not submitted at the hearing . . . would likely change the outcome of the decision and there

was good cause for not having previously submitted that evidence.” Minn. Stat. § 268.105, subd. 2(c)(1).

The ULJ concluded that McDuffie had “not provided any information or arguments that require changing the decision or ordering another hearing.” The ULJ first determined that McDuffie had “not shown good cause for failing to present the additional evidence from her witness during the hearing.” The ULJ cited three opportunities McDuffie had to call her witness—or to ask the ULJ to do so—and stated that McDuffie had “ample opportunity to ask the judge to call her witness before testimony ended and chose not to do so.”

The ULJ also determined that “information in the witness’s statement would not likely change the outcome [T]he witness’s statement confirms that McDuffie was late for meetings and that McDuffie’s tardiness was frustrating to leadership.” The ULJ stated that McDuffie failed to explain how the witness would “clarify McDuffie’s inconsistent and illogical statements . . . nor does the written statement from the witness show that the credibility finding was likely incorrect.” The ULJ concluded that “screenshots of additional messages would not likely affect the outcome of the case.”

We agree with the ULJ that the witness’s letter does not contradict evidence that McDuffie was repeatedly late for work and events, failed to communicate with employer, and that employer notified McDuffie that repeated tardiness could lead to her discharge. The screenshots relate to only one instance of tardiness and do not appear to contradict the ULJ’s finding that McDuffie was late on May 22, 2024, because they show that McDuffie communicated her arrival to the building *after* the scheduled meeting time.

Because McDuffie failed to show good cause for not requesting to call her witness and neither the witness's likely testimony nor the screenshots would have changed the outcome of the hearing, the ULJ did not err in denying McDuffie's request for reconsideration.

In sum, the ULJ's decision was supported by substantial evidence and the ULJ did not misapply the law in concluding that McDuffie was discharged for employment misconduct. The ULJ also followed lawful procedure during McDuffie's hearing and did not err in denying reconsideration.

Affirmed.