

*This opinion is nonprecedential except as provided by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
A25-1011**

Jackson Benson,
Relator,

vs.

Housing & Redevelopment Authority of Winona,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 11, 2026
Affirmed
Halbrooks, Judge***

Department of Employment and Economic Development
File No. 51360496

Jackson Benson, Winona, Minnesota (pro se relator)

Housing & Redevelopment Authority of Winona, Winona, Minnesota (respondent employer)

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

Considered and decided by Ross, Presiding Judge; Worke, Judge; and Halbrooks, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he was discharged for misconduct. Relator argues that his failure to report for work did not constitute employment misconduct under Minnesota Statutes section 268.095, subdivision 6 (2024), because his conduct was excused under the single-incident and good-faith exceptions. He also contends that the ULJ's findings are not supported by substantial evidence. We affirm.

FACTS

Relator Jackson Benson began working as a maintenance specialist for respondent Housing & Redevelopment Authority of Winona (HRAW) in April 2000. On December 5, 2024, Benson asked his supervisor whether he could take off work the next day. Although his supervisor responded that he would “investigate and get back to” him, the supervisor did not get back to Benson.

Benson did not report to work on December 6, 2024. The executive director for the HRAW tried calling Benson on his personal phone and his work phone, but Benson did not answer his phones or call the executive director back.

The following Monday, Benson met with the executive director, who suspended Benson for three days without pay. After the three-day suspension, Benson was discharged on the grounds that he was absent without notice on December 6 and “failed to respond to calls despite knowing he needed to remain available for calls in the case of emergency.”

Benson applied to receive unemployment benefits from respondent Minnesota Department of Employment and Economic Development (DEED). DEED issued an initial determination that Benson was not eligible for unemployment benefits because he was terminated for employment misconduct. Following Benson's appeal of that determination, a hearing before a ULJ occurred.

This dispute is not about what Benson did, but whether his conduct constituted misconduct under Minn. Stat. § 268.095, subd. 6. Throughout the proceedings, the parties agreed to the following facts: (1) Benson asked his supervisor if he could take time off the next day; (2) Benson did not receive a response; (3) he did not report for work the next day and did not respond to the executive director's attempts to contact him; and (4) his employment was terminated as a result. The parties also agreed that Benson's belief that he was entitled to take off December 6 was based on an old policy, which was no longer in effect.

The old policy stated that if an employee worked on-call over a weekend, they could take the following Friday off. The current policy stated that an employee who worked on-call over a weekend earned two hours off per day, and the employee could take four hours of paid time off on the following Friday afternoon. But if the employee wished to take the full Friday off, they would have to use their vacation hours for the morning and submit a request by the Wednesday before.

Both the executive director and the finance director of the HRAW testified at the hearing. The executive director testified that the old policy had not been in effect since "before 2011." She stated that in her meeting with Benson on the Monday after he missed

work, he explained his absence by “talk[ing] about the old process from back in 2010 or 2009.” She also testified that she had talked to Benson about the importance of answering his phone and responding to phone calls prior to December 6. The executive director testified that the new policy was in writing and was most recently provided to all staff at a staff meeting in October 2024. The employer introduced into evidence minutes from the staff meeting and a copy of the policy, as well as the timesheet that showed that Benson was present for the meeting.

Benson testified that he believed that he was entitled to take a full day off on Friday without putting in a request or using vacation hours because he had “earned eight hours” by working on-call during the previous four-day weekend. He believed that the old policy was in effect until two and a half years ago. This was the first time that he had been on-call over a four-day weekend since the new policy went into effect and, because he believed he had “earned eight hours,” Benson thought that he “should not have had to use vacation” to take the full day off.

Benson testified that he spoke to his supervisor on December 5 about taking the following day off. The supervisor said that he would “get back to [him] and never did. So [Benson] just stayed home” on Friday. On December 6, Benson’s work phone was at work, and his personal phone had fallen out of his pocket while he was in his wife’s car. As a result, he did not have access to his phone until his wife came home from work around 3:00 p.m. When she got home, Benson saw that the executive director had left messages for him on his personal phone. Even though Benson knew that the executive director

usually worked until 4:00 p.m., he did not respond to her messages because “the day was pretty much done.” Later that evening, he submitted a written request for time off.

The ULJ determined that Benson was discharged for employment misconduct and thus ineligible for unemployment benefits. As to the parties’ credibility, the ULJ found that “the parties provided largely consistent testimony about the relevant facts.” The ULJ stated that “it is reasonable for an employer to expect that its employees will not only report to work as scheduled but also respond to calls when they know that they may be called in for an emergency.” The ULJ found that “Benson was unsure” whether he was allowed to take that Friday off when he spoke with his supervisor on Thursday. And the ULJ found that when his supervisor “never responded,” Benson “made no other effort to confirm his assumptions” about taking the day off. The ULJ concluded that “Benson’s absence without notice coupled with his failure to respond to [the executive director] when she asked him to call about his absence without notice was a serious violation of the standards of behavior an employer may reasonably expect” from an employee.

Benson filed a request for reconsideration on the ground that the misconduct at issue was simply “a matter of miscommunication” because he contacted his supervisor the day before his absence and the supervisor knew that Benson would not be coming to work. He also emphasized his consistent work record, stating that he had been employed with HRAW for more than 25 years “without incident until new management came in.”

The ULJ affirmed the previous decision, concluding that while Benson disagreed with it, he “fail[ed] to offer any specific factual or legal dispute with the decision.”

This appeal by writ of certiorari follows.

DECISION

When reviewing a ULJ's determination, appellate courts may affirm, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are, as relevant here, affected by an error of law or are unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2024). We review the ULJ's factual findings in the light most favorable to the decision and defer to the ULJ's credibility determinations. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *rev. denied* (Minn. Oct. 1, 2008). We “will not disturb the ULJ's factual findings when the evidence substantially sustains them.” *Id.* “Whether a particular act constitutes disqualifying conduct is a question of law we review de novo.” *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016).

I.

Benson contends that the ULJ erred when it determined that he was discharged for employment misconduct. An individual is ineligible for unemployment benefits if “the applicant was discharged because of unemployment misconduct.” Minn. Stat. § 268.095, subd. 4(1) (2024). “Employment misconduct means 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). “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). And an employer generally “has a right to expect an employee to work when

scheduled.” *Del Dee Foods, Inc. v. Miller*, 390 N.W.2d 415, 417 (Minn. App. 1986) (quotation omitted).

Benson argues that his conduct falls under both the single-incident and good-faith exceptions to misconduct in section 268.095, subdivision 6. We address each exception in turn.

A. Single-Incident Exception

The fact that an appellant was discharged for conduct involving “only a single incident” is “important” and “must be considered in deciding whether the conduct rises to the level of employment misconduct.” Minn. Stat. § 268.095, subd. 6(d). But a ULJ is not required to document this consideration in their orders. *Id.* And a single incident can “constitute misconduct” if the “employee deliberately chooses a course of action adverse to the employer.” *Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 524 (Minn. 1989). Quoting *Del Dee Foods*, DEED argues that “a single absence from work may constitute misconduct when an employee has not actually received permission to be absent.” 390 N.W.2d at 417.

Relying on language from the 2006 statute, Benson counterargues that he cannot be denied unemployment benefits because his conduct constituted a “single incident that does not have a significant adverse impact on the employer.” Minn. Stat. § 268.095, subd. 6(b) (2006).

Benson’s argument is flawed for two reasons. First, the legislature amended the statute in 2009 to remove the language stating that a “single incident that does not have a significant adverse impact on the employer” is “not employment misconduct.” 2009 Minn.

Laws ch. 1, § 9, at 47-48. Therefore, while a ULJ is still required to consider whether conduct was a single incident in determining whether employment misconduct occurred, proof that conduct was “a single incident that does not have a significant adverse impact on the employer” no longer precludes a ULJ from determining that employment misconduct occurred.

Second, Benson did not prove that his conduct was a single incident that did not have a significant adverse impact on HRAW. In fact, the ULJ’s findings suggest otherwise. The ULJ found that Benson failed to respond to calls even though “he knew he needed to remain available for calls in the case of emergency,” and that this absence, “coupled with his failure to respond to the executive director when she asked him to call about his absence without notice was a *serious violation* of the standards of behavior an employer may reasonably expect.” (Emphasis added.)

Thus, we conclude that the single-incident exception does not apply.

B. Good-Faith Exception

Under section 268.095, subdivision 6(b)(6) (2024), “good faith errors in judgment if judgment was required” are “not employment misconduct.” But the good-faith exception does not apply when “no judgment was required of” the employee and when the employee’s duty “was simply to follow the policy without having any discretion to choose otherwise.” *Potter v. N. Empire Pizza, Inc.*, 805 N.W.2d 872, 877 (Minn. App. 2011), *rev. denied* (Minn. Nov. 15, 2011).

Benson argues that “[m]isconduct requires conduct showing a serious violation of standards, not a good faith mistake,” and that because he asked his supervisor for permission before he missed work, any error was made in good faith.

DEED argues that the good-faith exception does not apply for two reasons. First, Benson “was not required to use judgment in determining whether he should stay home” because he “did not have express approval from his supervisor.” Second, Benson “did not follow the procedure for requesting the day off.”

We agree with DEED. The ULJ found that HRAW’s updated policy required employees who wanted to take a full Friday off to submit a request at least two days before the time off. Benson did not submit a request before taking time off and asked his supervisor about taking time off only one day in advance. Then, without hearing back from his supervisor or speaking to anyone else in management, Benson “neither reported to work on December 6, 2024 nor called in to report that he was not working that day.” The ULJ concluded that Benson was “unsure” whether he was permitted to take that day off and that he “made no other effort to confirm his assumptions.” Benson does not argue that the updated policy was unreasonable and offers no excuse for failing to follow it, other than his assumption that the old policy still applied in his situation. In sum, we conclude that Benson was not required to exercise his judgment in deciding whether to stay home. Thus, the good-faith exception does not apply.

II.

Benson also argues that the ULJ’s determination must be reversed because its findings are not supported by sufficient evidence. Specifically, he contends that the ULJ

“disregarded” testimony that he contacted his supervisor “prior to the absence.” But he does not specifically challenge any of the ULJ’s findings.

Because the ULJ made a finding that Benson spoke to his supervisor about taking time off, we interpret Benson’s argument to be that in reaching its decision, the ULJ gave inadequate weight to that factual finding. But it is not our role to reweigh evidence. *Staehele v. City of St. Paul*, 732 N.W.2d 298, 312 (Minn. App. 2007) (stating, in the context of an appeal under the Minnesota Administrative Procedures Act, that “[w]e do not reweigh conflicting evidence or re-judge the credibility of testimonial evidence”). An appellate court may reverse or modify a ULJ’s decision only if, among other things, it is “unsupported by substantial evidence.” Minn. Stat. § 268.105, subd. 7(d)(5). And as stated above, “this court will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Peterson*, 753 N.W.2d at 774.

Here, the ULJ’s findings are supported by substantial evidence. The ULJ found that Benson did not report to work, did not follow the updated policy for taking that Friday off, and did not remain in contact with his supervisor by phone. These findings are supported by Benson’s testimony that he did not go to work on that day, he did not ask his supervisor to take time off two days in advance, and he did not submit his time-off request until after he had missed work. Benson’s testimony that his phone was in his wife’s car on December 6 and that he did not return the executive director’s calls even after his wife returned with his phone also supports the ULJ’s findings. Benson stated that he assumed that he could take the day off because of previous practices, but he presented no evidence or testimony

to refute HRAW's evidence that the updated policy was discussed at a meeting that Benson attended.

Because we conclude that Benson's conduct constituted employment misconduct as defined under section 268.095, subdivision 6, and the record supports the ULJ's findings, the ULJ did not err in determining that Benson is ineligible for unemployment benefits.

Affirmed.