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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1246**

Colton Seelye,
Relator,

vs.

Leech Lake Band of Ojibwe,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed March 30, 2026
Affirmed
Cleary, Judge***

Department of Employment and Economic Development
File No. 51586627-3

Colton Seelye, Bena, Minnesota (self-represented relator)

Leech Lake Band of Ojibwe, Cass Lake, Minnesota (respondent employer)

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

Considered and decided by Reyes, Presiding Judge; Bond, Judge; and Cleary, Judge.

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

NONPRECEDENTIAL OPINION

CLEARY, Judge

In this certiorari appeal, relator seeks review of the decision of an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he was discharged for employment misconduct. Relator argues that (1) the ULJ's conclusion was an error of law and unsupported by substantial evidence, (2) he did not receive a fair hearing, (3) his termination was an act of retaliation, and (4) the ULJ made unsupported credibility determinations. Because we conclude that the ULJ's decision and factual findings are supported by substantial evidence, and we discern no legal or procedural errors, we affirm.

FACTS

The following facts derive from the testimony and exhibits in the record before the ULJ. Respondent Leech Lake Band of Ojibwe (the employer) discharged relator Colton Seelye from his role as a part-time emergency medical technician (EMT) attendant in January 2025. Seelye was in his 90-day probationary period in the role at the time. After he was discharged, Seelye applied for unemployment benefits with respondent Minnesota Department of Employment and Economic Development (DEED). DEED initially determined that Seelye was ineligible for benefits because he was discharged for employment misconduct. Seelye appealed that determination, and the matter was scheduled for a hearing.

At the hearing, the ULJ received exhibits from the employer and heard testimony from Seelye and his supervisor, K.C., as well as an employee-relations representative with the employer and one of Seelye's coworkers.

During the hearing, K.C. explained the three main incidents that led to Seelye's discharge from employment. In the first incident, as reported by multiple employees, Seelye confronted a coworker because of a disagreement over a patient-care decision. Seelye reportedly stood up and yelled aggressively at the coworker, "Are you scared?" After the argument, Seelye went to the emergency room and received treatment for anxiety.

In the second incident, Seelye failed to appear for a scheduled shift. K.C. testified that when he called Seelye to ask him to come in, Seelye said, "I don't care. I'm not coming in. No, I didn't sign up for the shift." Seelye also stated he was three hours away from work at that time. K.C. wrote Seelye up for a no-call, no-show.

In the third incident, reflected in an incident report filed by a coworker, Seelye drove an ambulance carelessly during a snowstorm. Seelye reportedly hit a sign while reversing the ambulance, and he drove erratically while transporting a patient. After dropping off the patient, Seelye then drove at "speeds of 70 miles an hour, swerving from rumble strip to rumble strip," despite poor visibility and snow coverage on the road. Seelye also activated the vehicle's emergency lights "so he could get people driving slower to move out of his way." K.C. stated that Seelye's driving went against the expectations and policy of the department.

After K.C.'s testimony, Seelye testified that he believed he was discharged by the employer because he filed "multiple incident reports against a couple of [his] co-workers who were actively harassing [him]." Seelye also disputed K.C.'s descriptions of the incidents leading to his discharge. First, Seelye attributed his aggressive behavior toward a coworker to a severe anxiety attack. Second, regarding the missed shift, Seelye explained

that he refused to work the shift because he was several hours away, and he claimed that he did not sign up for the shift and the copy of his work schedule saved on his phone did not show that he was supposed to work that day. As for the third incident, the driving complaint, Seelye confirmed that he hit the sign, repeatedly ran over the rumble strips on the road to try to identify the sides of the lanes under the snow coverage, and drove 65 miles-per-hour in a 60 mile-per-hour zone. When the ULJ asked Seelye about his understanding of the employer's ambulance driving policy, Seelye stated that he believed he was allowed to drive above the speed limit when the vehicle's emergency lights were activated, but he otherwise had to follow the speed limit. Seelye conceded that he drove above the speed limit when the emergency lights were off that evening.

After the hearing, the ULJ found that Seelye was discharged because "he did not use due care while driving the ambulance in a snowstorm," "he yelled at a coworker," and "he refused to work a shift." The ULJ found credible both K.C.'s testimony and Seelye's admissions about his driving and his argument with a coworker. The ULJ then concluded that Seelye's lack of due care while driving and his refusal to work a scheduled shift amounted to employment misconduct. The ULJ further concluded that Seelye did not engage in employment misconduct when he yelled at his coworker because his "conduct was due to mental illness or impairment."

Seelye requested reconsideration. In a written decision, a ULJ affirmed the original decision and determined that Seelye failed to provide new evidence that would likely change the decision and failed to prove that any existing evidence was likely false.

Seelye seeks review by writ of certiorari.

DECISION

When reviewing a ULJ's decision, we may affirm or remand, or we may reverse or modify the decision "if the substantial rights of the petitioner may have been prejudiced." Minn. Stat. § 268.105, subd. 7(d) (2024). A petitioner's substantial rights may be prejudiced if the ULJ's decision was

- (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.

Id. A ULJ's decision is supported by substantial evidence when it is based on "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Dourney v. CMAK Corp.*, 796 N.W.2d 537, 539 (Minn. App. 2011) (quoting *Minn. Ctr. for Env't. Advoc. v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002)).

On appeal, Seelye argues that (1) the ULJ erred in concluding that he was discharged for misconduct, (2) his discharge was retaliatory, (3) the ULJ made erroneous credibility determinations, and (4) the proceedings were unfair. We consider each argument in turn.

I. The ULJ did not err in concluding that Seelye was discharged for misconduct.

Employees discharged for misconduct are "ineligible for all unemployment benefits." Minn. Stat. § 268.095, subd. 4 (2024). 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 (2024). Certain conduct is exempt from being considered misconduct, including “conduct an average reasonable employee would have engaged in under the circumstances.” Minn. Stat. § 268.095, subd. 6(b)(4).

“Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). The question of whether the employee engaged in certain conduct is a question of fact. *Lawrence v. Ratzlaff Motor Express Inc.*, 785 N.W.2d 819, 822 (Minn. App. 2010). This court reviews the ULJ’s factual findings “in the light most favorable to the [ULJ’s] decision, giving deference to the credibility determinations made by the ULJ,” and we will not disturb those findings when the evidence substantially sustains them. *Id.* We review de novo the legal question of whether that conduct amounts to disqualifying misconduct. *Id.*

Seelye argues that the ULJ’s conclusion that he was discharged for misconduct was erroneous and unsupported by substantial evidence. The ULJ specifically concluded that both Seelye’s lack of due care while driving an ambulance and his refusal to work a scheduled shift amount to employment misconduct. We agree with the ULJ’s legal determination as to both incidents, and we are persuaded that the record supports those determinations.

Beginning with Seelye’s behavior while driving, the record supports that Seelye violated the employer’s policies and reasonable expectations. K.C. testified that the

employer requires ambulance drivers to “take in the road conditions at the time, the weather, all the factors out there to adjust their speed,” and to “definitely slow down” in snowy conditions. He also stated that drivers were “not allowed to speed.” This is a reasonable safety policy for an ambulance service to establish, particularly because the drivers are transporting ill and injured patients.

We agree with the ULJ that Seelye’s violation of these expectations amounts to misconduct. “As a general rule, refusing to abide by an employer’s reasonable policies and requests amounts to disqualifying misconduct.” *Schmidgall*, 644 N.W.2d at 804. Based on Seelye’s admissions at the hearing, he knew of these policies and intentionally violated them. Seelye testified that he knew he was expected to follow the speed limit, but he nevertheless drove above the posted speed. Seelye also admitted that he did not slow down for weather conditions, and he repeatedly swerved the vehicle back and forth onto the road’s rumble strips. These admissions reflect violations of the employer’s expectations and policies in multiple respects, and we therefore conclude that Seelye’s actions amounted to misconduct.¹

¹ Seelye argues that he was not discharged based on his driving because that incident was not cited on his discharge paperwork, and he was not informed of it prior to being discharged. Seelye cites no authority showing that he was entitled to additional notice about the incident report before he was discharged. There is also evidence in the record showing that the driving complaint was consistently cited by the employer as a reason for Seelye’s termination. Even if Seelye did not know this incident report was filed, that the record shows that the employer considered this incident in its decision to terminate Seelye’s employment.

We also agree with the ULJ that Seelye's refusal to work, as supported by substantial record evidence, amounts to misconduct. "[A] single absence without permission from the employer may amount to misconduct." *Hanson v. Crestliner Inc.*, 772 N.W.2d 539, 543 (Minn. App. 2009). Courts look to the reason given for the unexcused absence to determine whether the absence was "a serious violation of the standards of behavior the employer has the right to reasonably expect." *Id.* at 544. An absence without notice that resembles "conduct the average reasonable employee would have engaged in under the circumstances" is not misconduct. *Id.* (concluding an employee did not commit misconduct by missing a shift without permission because of the unexpected hospitalization of a family member); Minn. Stat. § 268.095, subd. 6(b)(4).

K.C. testified that, once an employee signs up for a shift, "it is their responsibility to show up and work that shift." If they cannot work, it is "their responsibility to find a replacement EMT for that shift." Seelye admitted that he refused to work when K.C. called him, which the ULJ deemed a credible admission. Seelye also did not attempt to find replacement coverage for the shift. We are persuaded that, by Seelye's own admission, he committed misconduct because his absence without prior notice violated his employer's reasonable expectations. *See Hanson*, 772 N.W.2d at 544.

Seelye maintains that he did not sign up for the shift and therefore he did not violate expectations by failing to cover it. The ULJ found that Seelye forgot that he signed up for the shift "based on the more likely series of events." The ULJ's findings here are supported by the record. K.C. testified that he believed Seelye signed up for the shift because the handwriting and red ink used on the schedule resemble Seelye's other handwritten entries.

As additional support, another employee from K.C.'s department testified that she took a picture showing Seelye's name listed on the schedule on the day he missed the shift. Based on this evidence, there is sufficient support for the ULJ's finding that Seelye forgot he signed up for a shift, and he therefore did not meet his employer's reasonable expectations of either appearing for work or finding coverage.

Seelye also argues that it was not reasonable for his employer to expect him to drive multiple hours in the middle of the night to cover a shift. An employee's absence without notice may not amount to misconduct if it was "conduct an average reasonable employee would have engaged in under the circumstances." Minn. Stat. § 268.095, subd. 6(b)(4). Here, a reasonable employee would have been aware of their work schedule and ensured they were available for scheduled shifts. But even in the case where an employee forgot about a shift, Seelye's conduct was still unreasonable. Based on K.C.'s testimony, Seelye had another option—he could have attempted to find another coworker to cover the shift. Instead, Seelye told his employer that he did not care that the schedule showed he had a shift, and he refused to remedy the situation. We are thus unpersuaded that he acted as a reasonable employee under these circumstances.

In sum, we discern no error in the ULJ's conclusion that Seelye committed and was discharged for employment misconduct.

II. The ULJ properly considered Seelye's alternative explanation for his discharge.

Seelye also argues that the employer terminated him in retaliation for reports he filed against other employees, and he asserts that the ULJ did not properly consider evidence reflecting that retaliatory motive.

“When the reason for the discharge is disputed, the hearing process must allow evidence on the competing reasons and provide factual findings on the cause of discharge.” *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997) (emphasis omitted). We are convinced that the ULJ both developed the record on the competing reasons given for discharge and provided sufficient factual findings.

During the hearing, Seelye testified that he believed that he was discharged for filing incident reports against his coworkers. Upon the ULJ's inquiry, Seelye then elaborated on the contents of the reports, which employees were involved, and when he submitted the reports. The ULJ also heard K.C.'s testimony on the three incidents that K.C. stated led to the decision to discharge Seelye. In the written decision following the hearing, the ULJ concluded that the employer discharged Seelye for the incidents to which K.C. testified and made over two pages of factual findings supporting that conclusion.

From this record and the ULJ's written decision, we conclude that the ULJ knew that Seelye disputed his employer's stated reason for his discharge, allowed both Seelye and K.C. to present evidence, and then made factual findings on the cause of discharge.

See id. at 34. The ULJ therefore did not err or use an improper procedure in considering Seelye’s alternative explanation.²

III. The ULJ’s credibility determinations are supported by the record and not arbitrary.

Seelye next argues that the ULJ arbitrarily found testimony by employees of the employer more credible despite a lack of “independently verifiable evidence to support their claims.” We defer to the ULJ’s credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). In proceedings in which witness credibility “has a significant effect on the outcome of a decision,” ULJs are directed by statute to “set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1a(a) (2024).

The ULJ here appropriately set out the reasons for the credibility determinations. The ULJ found K.C.’s testimony credible because “it was candid, specific, and based on reports by multiple staff members.” The ULJ also found Seelye’s admissions about his own misconduct credible “because they were against his interest and consistent with the employer’s testimony.”

The ULJ’s credibility determinations are also supported by the record and not arbitrary. K.C. provided clear and specific explanations of the events leading to Seelye’s

² Relatedly, Seelye also argues that the incident reports he filed were evidence of negligent retention and supervision by the employer. Because this argument was not presented to the ULJ, we decline to consider it on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (“A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.” (quotation omitted)).

discharge, and he cited evidence to support his statements. Seelye made several admissions about his own conduct that confirmed K.C.'s testimony and were contrary to his interest, such as admitting that he drove an ambulance above the speed limit in a snowstorm, refused to come in for a shift, and yelled at a coworker during an anxiety attack. Even if this court did not defer to the ULJ's credibility findings, the ULJ's determinations are supported by the record and based on reasoned analysis.

IV. Seelye received a fair hearing.

Seelye last challenges the fairness of the hearing he received before the ULJ. He specifically argues that the ULJ showed preferential treatment toward the employer on the issue of Seelye's lack of due care while driving the ambulance. We are not persuaded.

Under DEED's rules, a ULJ "must exercise control over the hearing procedure in a manner that protects the parties' rights to a fair hearing," and "must ensure that all relevant facts are clearly and fully developed." Minn. R. 3310.2921 (2023). The ULJ also "may obtain testimony and other evidence from department employees and any other person the judge believes will assist the judge in reaching a proper result." *Id.* The ULJ "must assist all parties in the presentation of evidence." *Id.*

The ULJ fully investigated the facts relevant to the complaint about Seelye's driving. The ULJ received testimony from both K.C. and Seelye on the competing versions of events underlying the driving complaint to clarify the employer's policies and Seelye's understanding of them. The ULJ also inquired into whether any other evidence supported the complaint, such as whether the ambulance contained speed monitoring equipment. The

ULJ's balanced inquiry into this issue thus reflects appropriate development of the relevant facts and fairness in conducting the proceedings.

Seelye argues that K.C.'s testimony on this incident lacked "independently verifiable evidence." Seelye appears to be referring to K.C.'s reliance on the incident report filed by another EMT as evidence of Seelye's careless driving. But "[a] witness at an evidentiary hearing is not required to have firsthand knowledge" and "a ULJ may receive any evidence which possesses probative value, including hearsay." *Skarhus*, 721 N.W.2d at 345 (quotation omitted). Thus, it was appropriate for the ULJ to rely on K.C.'s testimony, even if his testimony was based on a report by an employee who did not appear at the hearing to provide firsthand testimony.

Seelye also argues that the ULJ used incorrect terminology to describe facts during the hearing. But Seelye does not explain how that made the proceedings unfair or whether this terminology was prejudicial to his substantial rights. Without additional support or argument, these discrepancies in terminology do not rise to the level of improper procedure or unfairness.

In sum, we conclude that the ULJ did not err in reaching its determination that Seelye was discharged for misconduct during his probationary period of employment, and Seelye's substantial rights were not prejudiced by the ULJ's decision or the procedures that the ULJ followed.

Affirmed.