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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1401**

Chad Wosmek,
Relator,

vs.

City of Fifty Lakes,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 20, 2026
Affirmed
Connolly, Judge**

Department of Employment and Economic Development
File No. 51628497-3

Chad M. Wosmek, Emily, Minnesota (pro se relator)

City of Fifty Lakes, Fifty Lakes, Minnesota (respondent employer)

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

Considered and decided by Wheelock, Presiding Judge; Connolly, Judge; and
Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that he was
ineligible for unemployment benefits because he was discharged for the employment

misconduct of violating employer requests to stop bullying people. Relator argues that (1) the ULJ's decision is not supported by substantial evidence or (2) alternatively, the ULJ should have ordered an additional hearing. We affirm.

FACTS

These facts are based on the findings of the ULJ, some of which are disputed, and we address whether there is substantial evidence to support the ULJ's findings in our analysis below. Relator Chad Wosmek was employed by respondent City of Fifty Lakes (the city) as a full-time maintenance supervisor from January 3, 2018, until his discharge on March 19, 2025. He earned \$32.31 per hour. Wosmek is 6 feet and 5 inches tall and weighs 300 pounds.

In early March 2025, Wosmek was asked by an employee at a municipal liquor store to change out a sign. When the employee asked Wosmek the following day to restore the original sign, Wosmek reacted negatively, entering into an intimidating body posture and tone that visibly frightened the employee. The mayor of the city intervened and directed Wosmek to change the sign after observing that the employee appeared frightened by Wosmek's demeanor.

On March 6, 2025, Wosmek visited a hardware store and requested to speak with the owner. One of the store's employees told Wosmek that the owner was not available. Wosmek then requested a discount for buying in bulk for the city. After the store employee declined to authorize an additional discount beyond the typical 10%, Wosmek continued to argue and began using his size to physically intimidate her. He concluded the confrontation by threatening to plow snow to block the owner's driveway and then left the

store. The store employee reported the incident to the owner, who contacted the city to complain.

On March 19, 2025, the city discharged Wosmek based on his continued pattern of bullying behavior and use of his physical size to intimidate others. Respondent Department of Employment and Economic Development (DEED) initially determined Wosmek eligible for unemployment benefits. Specifically, DEED determined that

[t]he employer discharged the applicant during the week beginning 03/16/2025 because of an argument. The applicant's conduct was not a serious violation of the standards of behavior that the employer had the right to reasonably expect of the employee, or it was a single incident that had no significant adverse effect on the employment.

The city appealed the initial determination, and a de novo hearing was held on May 28, 2025. At the hearing, when asked by the ULJ whether he had witnesses to call, Wosmek stated that he did not. The ULJ also informed Wosmek of his right to request a continuance to secure witnesses, which Wosmek declined to do.

Three witnesses testified for the city about instances in which Wosmek was accused of using his physical stature to intimidate coworkers and third parties when he became angry. Following the hearing, the ULJ found that Wosmek engaged in a pattern of bullying and intimidating behavior. In making this determination, the ULJ specifically found that the witnesses for the city testified credibly in a clear, consistent, and straightforward manner, and that Wosmek's testimony was not credible. The ULJ then concluded that Wosmek was discharged for employment misconduct and was ineligible for

unemployment benefits, resulting in an overpayment of benefits. On reconsideration, the ULJ affirmed the decision. This certiorari appeal follows.

DECISION

Wosmek challenges whether the ULJ's determination that he is ineligible for unemployment benefits because of employee misconduct is supported by substantial evidence and whether the ULJ abused its discretion by declining to order an additional hearing. This court reviews an unemployment-benefits determination to determine whether a relator's substantial rights have been prejudiced because the findings, inferences, conclusions, or decisions are affected by an error of law or are unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2024).

I. The ULJ's decision that Wosmek is ineligible for unemployment benefits because of employee misconduct is supported by substantial evidence and not based on legal error.

"Employment misconduct" is defined as "any intentional, negligent, or indifferent conduct, on the job or off the job, that displays 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). An employee discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2024).

Whether an employee committed employment misconduct is a mixed question of law and fact. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). On appeal, we defer to the ULJ's credibility determinations and will uphold the ULJ's findings of fact if they are supported by substantial evidence. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2016). Substantial evidence is "such relevant evidence as a reasonable

mind might accept as adequate to support a conclusion.” *Gonzalez Diaz v. Three Rivers Cmty. Action, Inc.*, 917 N.W.2d 813, 816 n.4 (Minn. App. 2018) (emphasis and quotation omitted). But 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).

Wosmek contends that the ULJ erred in finding that he engaged in employment misconduct because he did not engage in a pattern of bullying or intimidating behavior. We disagree. A councilmember for the city testified that Wosmek was “mean and belligerent” toward the hardware store employee. When asked about the liquor store incident, the councilmember testified that Wosmek “kind of puffed up his chest. [He] is a very large person to begin with. And he was just very intimidating to the person, to the point that she actually addressed her manager on the subject.”

The mayor of the city testified that the hardware store employee was “very visibly upset” during Wosmek’s outburst. When asked about whether there were any other incidents that the ULJ should know about, the mayor testified:

[Wosmek] was always quite intimidating. He’s a large guy when people would talk to him and employees, yeah, its just. And his representation of the city, he, he, you know, in ’19, we had a problem. In ’25, we, we had a problem where it was mentioned in write-ups. And there was a lot of them in between those times that didn’t get write, written up or mentioned. I know I witnessed it many times. Like I said, I knew that in that one instance with the manager where I stayed. I knew what was going to happen, so that’s why I kind of stuck around for her because. I had witnessed it in the past that he would kind of. Kind of get puffed up, maybe a little bullyish, I guess.

The clerk of the city testified that Wosmek's temper had made her cry on prior occasions and that his behavior created anxiety in the workplace. Specifically, the clerk testified that:

I've worked with [Wosmek] since he started. I've been here since '99. And just, you know, good days but bad days, because of [Wosmek]'s, I would call it his temper. I've been a victim of it. You know, he's made me cry on occasion, which is highly unusual for me. And it could, it just, it made, workplace, it made it difficult. And I was there the day that he puffed up to [the liquor store employee] and I took off. I couldn't even, it gave me anxiety because I just, it's just too much in the workplace.

The clerk also described an incident where she asked Wosmek to move a bandstand and he "slammed his hand on the counter, yelling at me, and slammed both doors, leaving."

The ULJ was entitled to credit this testimony. "Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Bangston v. Allina Med. Grp.*, 766 N.W.2d 328, 332 (Minn. App. 2009) (quoting *Skarhus* at 345.) Appellate courts defer to the ULJ's credibility findings when supported by substantial evidence. *Ywsyf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007). The court "may not weigh that evidence on review." *Whitehead v. Moonlight Nursing Care Inc.*, 529 N.W.2d 350, 352 (Minn. App. 1995).

The ULJ set forth detailed reasons why the testimony of the employer's witnesses was more credible than Wosmek's testimony. The ULJ explicitly determined that "[f]or Wosmek's testimony to be true, it would require that everyone else was lying. There is no clear reason everyone would lie about him. The most probable explanation of events is that Wosmek behaved as alleged." Furthermore, the ULJ found that witnesses for the city

“all testified in a clear and straightforward manner without anything to suggest inaccuracy or deception.” The ULJ also noted that their witness testimony was consistent with the written submissions and “presented a logical sequence of events that culminated in Wosmek being discharged.” Therefore, the ULJ’s credibility determinations and factual findings are supported by substantial evidence and should be accorded deference.

Because the ULJ’s findings are supported by substantial evidence, the question becomes whether Wosmek’s conduct constitutes disqualifying employment misconduct. Wosmek argues that his conduct does not rise to the level of employment misconduct but instead falls into the statutory exceptions for simple unsatisfactory conduct, conduct an average reasonable employee would have engaged in under the circumstances, and good faith errors in judgment if judgment is required. *See* Minn. Stat. § 268.095, subd. 6(b)(3), (4), (6) (2024).

Wosmek first argues that his conduct fits into the “simple unsatisfactory conduct” statutory exception of misconduct. *See* Minn. Stat. § 268.095, subd. 6(b)(3). This argument fails. Wosmek reacted to work requests in an angry manner, using his size and body posture to intimidate others, and threatened to plow snow to block a driveway of a citizen of the city. He was discharged for conduct directed at coworkers and third parties. This is not a circumstance where Wosmek “attempted to be a good employee but just wasn’t up to the job and was unable to perform [his] duties to the satisfaction of the employer.” *Potter v. N. Empire Pizza, Inc.*, 805 N.W.2d 872, 877 (Minn. App. 2004) (quotation omitted), *rev. denied* (Minn. Nov. 15, 2011). Instead, Wosmek initiated threatening and intimidating behavior which is conduct that exceeds the “simple

unsatisfactory” exception “reserved for failures to meet basic job performance standards.”
Id.

Wosmek argues that his behavior at the hardware store “falls under conduct an average reasonable employee would have engaged in under the circumstances because it was [his] job to follow the yearly budget and fit this extra purchase into it.” However, Wosmek’s attempt to get a larger discount was not the behavior that was found to be employment misconduct. It was Wosmek’s conduct of arguing, intimidating, and threatening to block the owner’s driveway that violated the city’s reasonable expectations. In general, behavior that is aggressive, threatening, harassing, or disruptive is employment misconduct. *See Pitzel v. Packaged Furniture & Carpet*, 362 N.W.2d 357, 357-58 (Minn. App. 1965) (determining aggressive, offensive, erratic, and disruptive behavior constituted misconduct); *see also Rinne v. Concordia Univ., St. Paul*, No. A22-1096, 2023 WL 2359459, at *2-3 (Minn. App. Mar. 6, 2023) (determining that an employee that raised his voice, waved his arms, invaded space, and pounded the table was discharged for employment misconduct). Therefore, the ULJ’s determination—that Wosmek’s behavior was not what a reasonable employee would have engaged in under the circumstances—is supported by substantial evidence.

Finally, Wosmek argues his conduct was a good-faith error in judgment rather than employment misconduct. The statutory definition of employment misconduct excludes “good faith errors in judgment if judgment was required.” *See* Minn. Stat. § 268.095, subd. 6(b)(6). But no judgment was required of Wosmek as Wosmek knew he was not allowed to physically intimidate coworkers and third parties. Moreover, there is no evidence to

support a finding that Wosmek acted in good faith when choosing to engage in bullying, intimidating behavior.

Alternatively, Wosmek argues that his conduct was a single incident that had no significant adverse effect on the employment. *See* Minn. Stat. § 268.095, subd. 6(d) (2024). However, the record supports the ULJ’s factual finding that there were multiple instances of Wosmek using threatening and intimidating behavior which adversely affected coworkers and third parties.

Because the record evidence supports the findings of the ULJ and those findings support the conclusion that Wosmek was properly discharged for employment misconduct, and because none of the statutory exceptions to ineligibility based on employment misconduct identified by Wosmek apply, the ULJ did not err by determining that Wosmek was ineligible for unemployment benefits.

II. The ULJ did not abuse its discretion by declining to order an additional hearing.

Alternatively, Wosmek challenges the ULJ’s order denying reconsideration. Wosmek argues that a new hearing should be ordered because he submitted a recorded statement from the hardware store employee and letters from prior employers and coworkers giving character evidence about him. These materials were not submitted to DEED prior to the ULJ’s determination.

“A reviewing court accords deference to a ULJ’s decision not to hold an additional hearing and will reverse that decision only for an abuse of discretion.” *Skarhus*, 721 N.W.2d at 345. In deciding a request for reconsideration, the ULJ “must not consider any

evidence that was not submitted at the hearing,” except to determine whether to order an additional hearing. Minn. Stat. § 268.105, subd. 2(c) (2024). The ULJ must order an additional hearing if the party shows that the evidence which was not submitted at the hearing:

(1) would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence; or

(2) would show that the evidence that was submitted at the hearing was likely false and that the likely false evidence had an effect on the outcome of the decision.

Id.

Wosmek argues that he was unaware of his right to call witnesses and that newly submitted written and recorded statements from coworkers would demonstrate that the employer’s witnesses testified falsely. The ULJ rejected both arguments on reconsideration, and the record supports that determination.

As to the first ground, having good cause for the prior omission, Wosmek admits that a hearing packet was sent to him before the hearing that “contained [his] rights and exhibits that would be discussed in the hearing.” The ULJ found that this hearing guide “explicitly stated that Wosmek could have witnesses testify on his behalf.” At the outset of the hearing, the ULJ asked Wosmek whether he wished to call witnesses, and Wosmek replied that he did not. At no point did Wosmek express surprise about the opportunity to call witnesses. The ULJ also informed Wosmek that he had “the right to request that the hearing be rescheduled so that relevant documents or witnesses can be presented by subpoena if necessary.” At no point in the hearing did Wosmek request a continuance to

present witness testimony. On these facts, Wosmek cannot establish good cause for failing to present witness testimony at the hearing.

Wosmek additionally argues that he “could not have known he would need witnesses to dispute the new allegations the [city] made up at the hearing.” However, Wosmek was informed that the incident at the hardware store was a contributing reason for his discharge. Wosmek was also informed that he was discharged for past written reprimands. This should have put Wosmek on notice about what allegations were going to be discussed at the hearing. Therefore, the ULJ did not abuse its discretion by determining that Wosmek had not established good cause for not having previously submitted the evidence.

Further, the ULJ did not abuse its discretion in concluding that the information was unlikely to affect the outcome of the decision or demonstrate that the evidence presented at the hearing was false. The additional evidence included “[a] text from the City of Fifty Lakes Bar Manager who [Wosmek] worked with for 7 years at this job discussing that [Wosmek] did not use [his] size to intimidate or lose [his] temper with her.” The evidence also included an email from a previous employer stating “how respectful, kind, friendly and helpful [Wosmek] always was”; a text from Wosmek’s supervisor at the city “stating what kind of employee [Wosmek] was”; and a letter from a former employee “who was witness to how [Wosmek] was treated at the city.” Wosmek’s position is that the new evidence proves that the city’s testimony was false, and that, not only did Wosmek not bully anyone, but that he was the victim of bullying by the three witnesses for the 15 months prior to his discharge, and that the city’s fighting against Wosmek receiving benefits is a

continuation of this bullying. However, the ULJ considered and expressly rejected the suggestion that the city's witnesses were dishonest. Introducing character evidence from prior employers and coworkers likely does not provide probative evidence on the specific incidents at issue in the case. Wosmek has not shown there was evidence that was not submitted at the hearing that would change the outcome of the decision and that he had a good reason for not previously submitting the evidence, or that the evidence submitted at the hearing was likely false and that the likely false evidence affected the outcome of the decision. The ULJ did not abuse its discretion in declining to modify the decision or order an additional hearing.

Affirmed.