

*This opinion is nonprecedential, except as provided by
Minnesota Rule of Civil Appellate Procedure 136.01, subdivision 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1508**

Theresa Johnson,
Relator,

vs.

Mentor Management Inc,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 22, 2026
Affirmed
Ede, Judge**

Department of Employment and Economic Development
File No. 51618171-3

Theresa Johnson, Maplewood, Minnesota (self-represented relator)

Annika Petty Storlie, Littler Mendelson, P.C., Minneapolis, Minnesota (for respondent employer)

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

Considered and decided by Bentley, Presiding Judge; Ede, Judge; and Beane, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

Relator challenges an order by an unemployment-law judge (ULJ) affirming as modified a decision that respondent employer discharged her for employment misconduct

and she was therefore ineligible to receive unemployment benefits. In particular, relator argues that the ULJ's factual findings are unsupported by substantial evidence and that her employer discharged her in retaliation for a complaint she made to the Department of Human Services (DHS) regarding her employment at a group home for adults with disabilities. We affirm.

FACTS

The following summary stems from the findings of fact set forth in the ULJ's order affirming as modified a decision that relator Theresa Johnson was discharged for employment misconduct and thus ineligible to receive unemployment benefits. Consistent with applicable law, we present the facts in the light most favorable to the ULJ's decision.¹

From June 2024 to March 2025, Johnson worked as a full-time program supervisor for respondent Mentor Management Inc. d/b/a Sevita at Crestview (Sevita), a group home that serves adults with disabilities.

On February 6, 2025, Johnson complained to Sevita's management about how staff members were treating residents, asserting: that a resident's head was "nicked" several times when staff used clippers to cut the resident's hair; that there may have been an error in medication passing; and that a resident was not receiving the correct food. Johnson later found out that Sevita did not submit a report to DHS about these issues.

¹ See *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016) (instructing that appellate courts "review the ULJ's findings of fact in the light most favorable to the decision" (quotation omitted)).

On February 21, Johnson submitted a complaint to DHS about Sevita. Sevita learned about Johnson's complaint that same day. On February 28, while in the workplace, Johnson stated that other employees were using "voodoo" against her. She also accused her co-workers of placing a laxative in a staff coffee maker.

On March 2, Johnson refused to complete a medication-passing retraining as requested by Sevita's program director. Johnson asserted that the program director was retaliating against her based on her complaint to DHS.

On March 3, Johnson and her supervisor spoke via telephone. Johnson was upset with the supervisor and accused the supervisor of defamation because Johnson believed that the supervisor "had told a third person that Johnson was acting 'crazy.'" The supervisor denied making that statement. As the phone call ended, Johnson—who was in the presence of subordinate employees during the call—referred to the supervisor by stating, "F--k that b-tch." One of the subordinate employees overheard Johnson's statement and understood that Johnson was referring to the supervisor. That same day, Johnson told the subordinate employee that the employee "would be 'written up' for a medication error and would need to meet with the state." The subordinate employee confirmed with the supervisor that these disciplinary proceedings would not occur. Even so, the ULJ found that "Johnson's conduct toward [the employee] was disruptive." Johnson also made statements to several subordinate employees "that the state was going to 'shutdown' [Sevita]."

Sevita indefinitely suspended Johnson without pay on March 4.² At the time, Johnson had no disciplinary history. Sevita discharged Johnson for engaging in “inappropriate behavior”: “referring to her boss as a ‘b-tch’ in front of subordinates”; “telling subordinates that the state would ‘shutdown’ [Sevita]”; and “making statements believing employees placed laxatives in the staff coffee.” And “Johnson was not discharged for any other reason,” including “complaining about Sevita to DHS” or violating the Health Insurance Portability and Accountability Act (HIPAA) by submitting photographs she had taken of residents’ medical records as part of her complaint to DHS. Indeed, at the time of Johnson’s March 4 discharge, Sevita was unaware that Johnson had taken such photographs.

On March 9, Johnson applied for unemployment benefits and established an account with respondent Minnesota Department of Employment and Economic Development (DEED).³ DEED later issued a determination of ineligibility to Johnson, informing her of its decision that she was ineligible to receive unemployment benefits because Sevita discharged her based on employment misconduct. Johnson appealed DEED’s determination, and a ULJ conducted a de novo hearing. Before the April 28 hearing, the parties submitted exhibits that included written statements about why Johnson’s

² An indefinite suspension is treated as a discharge for purposes of unemployment benefits, and the ULJ determined that “this [was] a discharge.” The order underlying this appeal states that Johnson’s indefinite suspension and discharge occurred on May 26. This appears to have been a typographical error, and the parties do not dispute that Sevita discharged Johnson on March 4.

³ DEED “is the primary responding party to any judicial action involving an unemployment law judge’s decision.” Minn. Stat. § 268.105, subd. 7(e) (2024).

employment with Sevita had ended. Johnson participated in that hearing but Sevita did not. The ULJ held another hearing on May 21, at which Sevita participated and the supervisor testified. In findings of fact and a decision issued on May 27, the ULJ determined that Sevita discharged Johnson based on employment misconduct and that Johnson was therefore ineligible to receive unemployment benefits.

After Johnson requested reconsideration, the ULJ issued an August 8 order affirming as modified the May 27 decision.⁴ The ULJ reasoned that “Sevita had the right to expect that Johnson would not disparage her supervisor as a ‘b-tch’ in the workplace in the presence of [her] subordinates” and to expect that Johnson would not “make comments to [her] subordinates that the state would be shutting down [Sevita].” And the ULJ determined that Johnson’s conduct “was a serious violation of the standards of behavior [Sevita] ha[d] the right to reasonably expect of [Johnson]” because: her “comments were insubordinate” by “undermin[ing] management’s authority”; her comments were “intentional because she made conscious choices in making these statements”; and Sevita’s expectation that Johnson would not behave as she did was “reasonable because it was common sense and [the conduct] was easily avoided.”

The ULJ also decided that the program director’s conduct in requesting that Johnson complete a medication-passing retraining “was not retaliation” for Johnson’s complaint to DHS. More specifically, the ULJ determined that, although “Sevita [had] investigated

⁴ Although the ULJ’s August 8 order modified the May 27 decision “to better explain the reasoning and to correct some non-substantive typographical errors,” the “result remain[ed] the same.”

Johnson in part because of [her] DHS complaint,” that investigation did “not relieve [Johnson] from her own responsibilities toward [Sevita] for purposes of analyzing whether [she was] eligible to receive unemployment benefits.” Thus, the ULJ decided that, by a preponderance of the evidence, “Johnson was discharged for employment misconduct, and she is ineligible to receive unemployment benefits.”

This certiorari appeal follows.

DECISION

Johnson challenges the ULJ’s August 8, 2025 order affirming the May 27, 2025 decision that Sevita discharged Johnson based on employment misconduct and that Johnson was therefore ineligible to receive unemployment benefits. In particular, Johnson asserts that the ULJ’s “findings of misconduct [are not] supported by the evidence” and that Sevita discharged her in retaliation for her complaint to DHS. DEED counters that “the findings of fact regarding the reasons for the discharge are supported by substantial evidence.” We agree with DEED.

“The Minnesota Court of Appeals must, by writ of certiorari to . . . [DEED], review the unemployment law judge’s decision on reconsideration” Minn. Stat. § 268.105, subd. 7(a) (2024). When reviewing a ULJ’s decision, we may affirm, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because, among other things, the decision is unsupported by substantial evidence in the hearing record. *Id.*, subd. 7(d) (2024); *see also Icenhower v. Total Auto., Inc.*, 845 N.W.2d 849, 855 (Minn. App. 2014) (“We may reverse or modify a ULJ’s decision if the relator’s substantial rights may have been prejudiced because the findings

or decision are unsupported by substantial evidence . . .”), *rev. denied* (Minn. July 15, 2014).

“The question of whether an employee engaged in conduct that disqualifies . . . [them] from unemployment benefits is a mixed question of fact and law.” *Wilson*, 888 N.W.2d at 460. “Whether a particular act constitutes disqualifying conduct is a question of law [that appellate courts] review de novo.” *Id.* And whether the reason for an employee’s discharge was retaliation is a question of fact for the ULJ. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997) (considering the reason an employee was discharged a question of fact and holding, “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.”).⁵ As noted above, appellate courts “review the ULJ’s findings of fact in the light most favorable to the decision and will not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them.” *Wilson*, 888 N.W.2d at 460 (quotations omitted).

An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. 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) (2024).

⁵ Cf. *Ward v. Delta Airlines*, 973 N.W.2d 649, 652 (Minn. App. 2022) (stating that it is a question of fact for the ULJ to consider whether an employee quit), *rev. denied* (Minn. June 21, 2022).

Viewed in the light most favorable to the decision, there is evidence in the record that reasonably tends to sustain the ULJ's determination that Sevita discharged Johnson for employment misconduct, i.e., intentionally committing a serious violation of the standards of behavior that Sevita had the right to reasonably expect of Johnson. *See Wilson*, 888 N.W.2d at 460; *see also* Minn. Stat. § 268.095, subd. 6(a). That is to say, there is substantial evidence in the record that Johnson intentionally and seriously violated Sevita's reasonable expectations that Johnson would not disparage her supervisor as a "b-tch" in the presence of subordinate employees and would not tell those employees that the state would shut down Sevita. *See* Minn. Stat. § 268.105, subd. 7(d). And the record evidence sustains the ULJ's determination that this conduct was "insubordinate" by "undermin[ing] management's authority" and "intentional" as "conscious choices," as well as the ULJ's decision that Sevita's expectation as to Johnson's behavior was "reasonable because it was common sense and [the conduct] was easily avoided."

It is undisputed that Johnson made disparaging statements about her supervisor in the presence of subordinate employees. At the de novo hearing before the ULJ, Johnson admitted that she referred to her supervisor when she said, "F-ck that b-tch." It is also uncontroverted that Johnson told subordinate employees that Sevita would be shut down by the state. These statements were an intentional and serious violation of the standards of behavior that Sevita had a right to reasonably expect of Johnson. *See* Minn. Stat. § 268.095, subd. 6(a). We have held that an employee's rude behavior toward fellow employees and supervisors can constitute employee misconduct. *Montgomery v. F & M Marquette Nat'l Bank*, 384 N.W.2d 602, 605 (Minn. App. 1986), *rev. denied* (Minn. June 13, 1986); *see*

also Pitzel v. Packaged Furniture & Carpet, 362 N.W.2d 357, 357–58 (Minn. App. 1985) (concluding that “aggressive and offensive” behavior with customers is employment misconduct).

We are mindful that, when “the conduct for which the applicant was discharged involve[s] only a single incident, that is an important fact that must be considered in deciding whether the conduct rises to the level of employment misconduct.” Minn. Stat. § 268.095, subd. 6(d) (2024). Here, however, the record establishes that Johnson’s conduct was not limited to a single isolated incident. Instead, the ULJ’s determination that Sevita discharged Johnson for employment misconduct was based on two instances: (1) Johnson’s profane disparagement of her supervisor; and (2) Johnson’s statement to subordinate employees that Sevita would be shut down by the state. Given the record before us, we conclude that the ULJ’s employment-misconduct determination is supported by the law and the undisputed facts. *See Goede v. Astra Zeneca Pharms., LP*, 992 N.W.2d 700, 711 (Minn. App. 2023) (determining that the ULJ’s decision that appellant engaged in employee misconduct was supported by substantial evidence and was not arbitrary or capricious), *rev. denied* (Minn. Sept. 19, 2023).

The record evidence also reasonably supports the ULJ’s determinations that the program director’s conduct in requesting that Johnson complete a medication-passing retraining “was not retaliation” for Johnson’s complaint to DHS and that Johnson was not discharged for complaining about Sevita to DHS or violating HIPAA by submitting photographs she had taken of residents’ medical records as part of her DHS complaint. Substantial evidence in the record supports the ULJ’s finding that, at the time of Johnson’s

March 4 discharge, Sevita was unaware that Johnson had taken such photographs. The supervisor testified at the de novo hearing that it was only after March 4 that Sevita learned Johnson had taken the photographs. Johnson presented no evidence to the contrary.

Lastly, the ULJ did not err in deciding that, while “Sevita [had] investigated Johnson in part because of [her] DHS complaint,” that investigation did “not relieve [Johnson] from her own responsibilities toward [Sevita] for purposes of analyzing whether [she was] eligible to receive unemployment benefits.” Indeed, the Minnesota Supreme Court has instructed that, in considering employment misconduct, “the focus of the inquiry is the employee’s conduct, not that of the employer.” *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 316 (Minn. 2011).

Thus, we discern no reversible error in the ULJ’s determination that Sevita discharged Johnson based on employment misconduct and that Johnson was thus ineligible to receive unemployment benefits.

Affirmed.