

*This opinion is nonprecedential except as provided by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
A25-1701**

Fredric A. Wilson,
Relator,

vs.

Jerry's Enterprises, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 26, 2026
Affirmed
Schmidt, Judge**

Department of Employment and Economic Development
File No. 51240808-6

Fredric A. Wilson, St. Paul, Minnesota (self-represented relator)

Jerry's Enterprises, Inc., Edina, Minnesota (respondent employer)

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

Considered and decided by Schmidt, Presiding Judge; Frisch, Chief Judge; and
Johnson, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Respondent Jerry's Enterprises, Inc., discharged relator Fredric A. Wilson for
repeated absences from scheduled shifts without advance notice. Wilson subsequently

applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) determined that Wilson was ineligible for benefits. Wilson appealed DEED's determination, and an unemployment-law judge (ULJ) determined that Wilson was ineligible for benefits because his employer discharged him due to employment misconduct. On a writ of certiorari to this court, Wilson argues that the ULJ erred by (1) failing to fully develop the record and (2) determining that Wilson's absences constituted employment misconduct. Wilson also argues that (3) the ULJ's decision was not supported by substantial evidence. We affirm.

FACTS

In April 2024, Wilson began working at Cub Foods, which is owned by Jerry's Enterprises, Inc. During orientation, Wilson was informed that employees are expected to work their scheduled shifts and must notify Cub Foods in advance of any absences.

In the six months that Wilson worked at Cub Foods, he missed thirteen shifts. Cub Foods discharged Wilson on October 8, 2024, after he missed four shifts in a row. Wilson missed two scheduled shifts on October 4 and 5 to attend a funeral and had notified Cub Foods in advance consistent with the policy. But Wilson did not notify Cub Foods before he missed a scheduled shift on October 6 or before he missed another scheduled shift on October 7. Wilson was discharged the next day.

Wilson applied for unemployment benefits. DEED determined that Wilson was ineligible for benefits because he was discharged for employment misconduct. Wilson appealed DEED's determination of ineligibility.

At a remote hearing, a ULJ heard conflicting testimony from Wilson and the Cub Foods assistant store director and admitted numerous exhibits into evidence. The ULJ continued the hearing to allow Wilson time to submit additional evidence explaining some of his absences. Wilson failed to provide any of the supplemental evidence that the ULJ had requested. When the ULJ reconvened the hearing, Wilson did not appear. The ULJ then summarily dismissed Wilson's appeal.

Wilson requested reconsideration of the ULJ's summary dismissal of Wilson's appeal. The ULJ denied Wilson's request for reconsideration. Wilson petitioned this court for a writ of certiorari. DEED filed a motion for an order to remand for further proceedings, which we granted.

On remand, the ULJ held another hearing. The ULJ heard testimony from Wilson, Wilson's significant other, the Cub Foods assistant store director, and a Cub Foods human resources manager. The ULJ also admitted more exhibits into evidence.

The ULJ found that Wilson was ineligible for unemployment benefits because he was discharged as a result of employment misconduct. The ULJ found that Cub Foods had a reasonable policy that employees were expected "to work their scheduled shifts and [to] notify Cub prior to their shift if they were going to be absent." The ULJ also found that Wilson was aware of this policy and violated it due to "a chronic pattern of being absent without notification." The ULJ specifically credited the assistant store director's testimony and found Wilson's testimony to be not credible.

Wilson filed a petition for a writ of certiorari to seek review of the ULJ's decision.

DECISION

We review the ULJ's findings of fact "in the light most favorable to the decision" and we will not "disturb those findings as long as there is evidence in the record that reasonably tends to sustain them." *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). "Whether an employee engaged in conduct that disqualifies [them] from unemployment benefits is a mixed question of fact and law." *Id.* (quotation omitted). We view the ULJ's factual findings in the light most favorable to the ULJ's decision. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But whether a particular act "constitutes employment misconduct is a question of law, which we review de novo." *Id.*

I. The ULJ adequately developed the record.

Wilson argues that the ULJ erred by failing to develop the record as required by Minnesota Administrative Rule 3310.2921 (2025), which provides that a ULJ "must assist all parties in the presentation of evidence" and must "ensure that all relevant facts are clearly and fully developed." We conclude that the ULJ satisfied and complied with the requirements of the rule.

The ULJ asked fair questions of witnesses on both sides. The ULJ also continued a hearing to allow Wilson to submit documents to explain his absences, but Wilson did not submit any of the requested material. Based on this record, the ULJ fulfilled the obligation of developing the record to ensure a fair hearing.

II. The ULJ did not err in determining that the employer discharged Wilson due to employment misconduct.

Wilson argues that the ULJ erred in concluding that the employer discharged Wilson due to employment misconduct. We disagree.

An applicant is ineligible for unemployment benefits if they were discharged due to employment misconduct. Minn. Stat. § 268.095, subd. 4(1) (2024). “Employment misconduct” is defined as “any intentional, negligent, or indifferent conduct . . . 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).

The ULJ determined that Cub Foods discharged Wilson because of his extensive absences. Whether absenteeism constitutes employment misconduct is a case-specific inquiry. *Stagg*, 796 N.W.2d at 316. The ULJ found that Cub Foods had a reasonable policy that required employees to work their scheduled shifts and provide notice before a shift starts if they will be absent. The ULJ found that Wilson was aware of this policy, but his “behavior showed a serious violation of the employer’s reasonable expectations.”

The ULJ did not err in determining that Wilson knew about Cub Foods’ reasonable policy, and that Wilson’s behavior of absenteeism constituted misconduct. *Id.* at 317 (concluding that an employee’s absences constituted employment misconduct where the employer “had an absenteeism and tardiness policy of which [the employee] was aware”). As the Minnesota Supreme Court has stated, “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).

Wilson contends that because the assistant store director testified that Wilson provided Cub Foods notice before his absences on October 4 and 5, that “negates the culpable mental state required for misconduct.” But this argument fails for two reasons. First, Cub Foods did not assert that Wilson failed to provide notice of his absences on October 4 and 5. The absences on those dates did not factor into the ULJ’s decision. Second, the statutory definition of employment misconduct does not require a culpable mental state. Minn. Stat. § 268.095, subd. 6(a). Instead, employment misconduct includes “any intentional, negligent, or indifferent conduct.” *Id.* Thus, the ULJ did not err in determining that Wilson’s absences constituted disqualifying misconduct.

III. The ULJ’s decision is supported by substantial evidence.

Finally, Wilson argues that the ULJ’s decision is not supported by substantial evidence. Again, we disagree.

Substantial evidence is “(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) (quotation omitted). We defer to the ULJ’s weighing of the evidence. *Whitehead v. Moonlight Nursing Care, Inc.*, 529 N.W.2d 350, 352 (Minn. App. 1995).

When the credibility of a witness “has a significant effect on the outcome of a decision, the [ULJ] must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1a(a) (2024). Such credibility determinations are in the province of the ULJ and will not be disturbed on appeal. *Skarhus*, 721 N.W.2d at 345.

Here, the ULJ's decision is supported by the testimony and exhibits demonstrating Cub Foods' policy, Wilson's awareness of the policy, and Wilson's attendance record. In addition, the ULJ found that the assistant store director's testimony was credible and that Wilson's testimony was not credible. As required by statute, the ULJ provided sufficient reasons for its credibility determinations. *See* Minn. Stat. § 268.105, subd. 1a(a). Therefore, we defer to the ULJ's credibility determinations. *Skarhus*, 721 N.W.2d at 345. The ULJ's decision is supported by substantial evidence.

Affirmed.