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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1797**

Allen Peterson,
Relator,

vs.

Edward R. Shaw, PA,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 10, 2026
Affirmed
Bratvold, Judge**

Department of Employment and Economic Development
File No. 51791460-3

Allen Peterson, Grand Rapids, Minnesota (attorney pro se)

Edward R. Shaw, PA, Brainerd, Minnesota (respondent employer)

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

Considered and decided by Reyes, Presiding Judge; Larkin, Judge; and Bratvold,
Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

On certiorari review, relator challenges the decision of an unemployment-law judge
(ULJ) that he was ineligible for unemployment benefits because he committed aggravated

employment misconduct. Relator argues that we should reverse the ULJ's decision because it is (1) unsupported by substantial evidence and (2) the result of unlawful procedure that excluded relevant witness testimony offered by relator. We conclude that the ULJ's decision is supported by substantial evidence and that the ULJ did not abuse their discretion when they excluded witness testimony. Thus, we affirm.

FACTS

The following summarizes the ULJ's written factual findings and decision, which were filed after an evidentiary hearing, along with the relevant record evidence and procedural history.

In February 2020, relator Allen Peterson began working as an attorney for a Brainerd law firm. He "clashed with" another attorney in the community, E.P., and spoke of her in derogatory terms to his coworkers, often commenting about "killing" E.P. Peterson's coworkers "initially believed that Peterson was joking." In November 2024, Peterson's girlfriend broke up with him, and "his behavior subsequently became erratic and unstable." After the breakup, Peterson "showed up" at his former girlfriend's home "three times uninvited" and sent her "a letter telling her how dangerous he could be."

In early 2025, Peterson exhibited aggressive behavior toward coworkers and made more comments about killing E.P. Peterson said he knew where E.P. lived and her home's layout. Peterson also "began grasping" two female paralegals "by the neck unexpectedly and without provocation." He told coworkers that he wanted to kill his former girlfriend, the father of his former girlfriend's children, and his former girlfriend's new boyfriend.

In March 2025, Peterson shared a video with the same two paralegals; the video recorded Peterson in the woods shooting at clothed target along with the message, “When I f-cking murder my enemies.” He mentioned E.P.’s name in the video and asked for “donations of long dark hair” to add to the target.

On April 21, 2025, Peterson told one paralegal that he “was going to take her behind the office and shoot her in the back of the head,” and the next day, he “stated that he ‘needed two body bags.’” Both paralegals were “increasingly uncomfortable and convinced that Peterson’s threats were serious.” On April 23, the two paralegals reported their fears to the law firm’s owner, E.S., who reported Peterson’s conduct to the local police.

A police investigator took statements from both paralegals and spoke with other law-firm employees, who corroborated the paralegals’ statements. The investigator also spoke with Peterson’s former girlfriend, who stated that Peterson “had many firearms at his current residence, in his truck, and at family members’ homes.”

Later that day, law-enforcement officers arrested Peterson at his office. Officers found a loaded firearm and ammunition in Peterson’s desk and other firearms and body armor in Peterson’s pickup truck. Officers petitioned for an extreme-risk protection order, which the district court granted on April 24. The State of Minnesota charged Peterson with two counts of felony stalking and two counts of felony threats of violence. Charges were pending at the time of the hearing before the ULJ.

Peterson received an employment termination letter while he was in jail. In June 2025, Peterson applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) determined that

Peterson was ineligible for benefits because he was discharged for aggravated employment misconduct. Peterson appealed that determination. In July, the ULJ conducted a hearing at which Peterson and E.S. testified. The parties stipulated to the admission of 11 exhibits, including the probable-cause statement that was filed with the state's criminal charges against Peterson.

The probable-cause statement identified the two paralegals as "employee A" and "employee B" and stated that they "reported physical assaults by Peterson while working at the law office"—specifically, "choking." Employee A reported that Peterson "would walk up to [her] and grab her by the throat without warning," that "[t]his happened at least ten times," and that Peterson told her, "I want to choke you until you die." She also reported that Peterson made "specific threats" to kill his former girlfriend and her new boyfriend. Employee B stated that Peterson "repeatedly talks about killing people and reports being serious about it." She also reported that Peterson "choked" her "until she could not breathe." Both paralegals described the video in which Peterson shot at a target resembling E.P.

At the outset of the hearing, Peterson told the ULJ that he sought to offer testimony from five witnesses, four former clients and an employee who was terminated before Peterson. Peterson explained that the proposed testimony would impeach E.S.'s credibility. The ULJ indicated that the witness testimony would not be allowed if it was not relevant.

E.S. testified that he terminated Peterson's employment as an associate attorney because Peterson demonstrated "repeated threatening and violent behavior against employees" and "fellow attorneys outside the office." During cross-examination, Peterson

referred to a lost-wages claim against E.S. and started to question E.S. about whether he had returned fees to a former law-firm client whom Peterson had identified as a witness. The ULJ interjected and asked Peterson to explain the relevance of this line of questioning.

Peterson responded that he sought to impeach E.S.'s credibility. The ULJ replied:

[T]he issue of [E.S.'s] credibility is pretty limited here because as far as . . . the reasons that you were discharged, and what he was aware of and when he became aware of it, he has a very limited role in going to law enforcement. I mean, he initially reported, but the whole investigation and everyone that law enforcement interviewed, their credibility would be more at issue than [E.S.'s]. So, I don't think it's worth the time and attention to attack [E.S.'s] credibility when the reasons you were discharged really doesn't hinge on his credibility.

At one point in the hearing, Peterson asked to call former clients as witnesses and seemed to imply that a continuance might be appropriate. The ULJ denied Peterson's request to call the witnesses, reasoning that the proposed testimony was not relevant to Peterson's eligibility for unemployment benefits.

During his testimony, Peterson acknowledged sharing the shooting video with the two paralegals. Peterson explained that coworkers "would complain about [E.P.] often." He also testified that he was "clearly kidding" when, in a text message, he asked the paralegals for "donations" of hair for his shooting target. Peterson denied threatening or intending to harm either E.P. or his former girlfriend; he also denied choking the paralegals or any coworker. Peterson explained that his behavior "was a Darth Vader force grab, which, like in the movies, was done from some amount of distance." Peterson suggested that E.S. and his coworkers may have fabricated the allegations about him because he had "plans to quit and take [his] clients with [him]."

The ULJ filed written findings of fact and a decision, concluding that Peterson was ineligible for unemployment benefits. The ULJ determined that Peterson's testimony that "all these individuals are lying" was "simply not believable." The ULJ found the individuals interviewed in the police investigation were credible and "expressed a genuine fear of Peterson." The ULJ also reasoned, "The individuals interviewed knew about Peterson's arsenal of firearms. It is unlikely that they would make such serious allegations, placing their safety in jeopardy, if there were not truths to their allegations."

The ULJ concluded that "a preponderance of the evidence established that Peterson was charged with four felonies stemming from actions he committed in and outside of the workplace during his employment" with the law firm. The ULJ also determined that, "[b]ecause Peterson's actions toward coworkers seriously violated [the law firm's] reasonable expectations and substantially interfered with his employment, aggravated employment misconduct occurred."

Peterson filed a request for reconsideration, arguing that the ULJ's decision rested on insufficient evidence, the ULJ erred in refusing to allow his witnesses to testify, and the ULJ was biased. Peterson submitted an addendum with several pages that described errors in the ULJ's determination as well as provided evidence to support Peterson's claims, including affidavits from the witnesses he had sought to call during the hearing. Peterson filed a letter asking that the Chief ULJ review his request for reconsideration.

The Chief ULJ filed an order affirming the ULJ's decision. The Chief ULJ's order stated that they had reviewed the proceeding and determined that the ULJ "did not demonstrate bias" against Peterson. The Chief ULJ's order also discussed the proposed

testimony of each witness whom Peterson identified and explained that the proposed testimony was not relevant and would not have changed the decision's outcome. The Chief ULJ concluded that Peterson "fails to identify any factual findings in the decision that are not supported by a preponderance of the evidence in the record" and therefore affirmed the ULJ's decision as "factually and legally correct."

Peterson petitioned for certiorari review.

DECISION

When reviewing a ULJ's eligibility decision, this court may affirm or remand for further proceedings. Minn. Stat. § 268.105, subd. 7(d) (2024). Alternatively, this court may reverse or modify a ULJ's decision if, among other things, it is "unsupported by substantial evidence," exceeds the ULJ's statutory authority, or is based on "unlawful procedure." *Id.*, subd. 7(d)(2), (3), (5). "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).

An individual who is discharged for aggravated employment misconduct is not eligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(2) (2024). Whether an individual committed employment misconduct is a mixed question of law and fact. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). We view "the ULJ's factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ," and we "will not disturb the ULJ's factual

findings when the evidence substantially sustains them.” *Ward v. Delta Airlines*, 973 N.W.2d 649, 651 (Minn. App. 2022) (quotations omitted), *rev. denied* (Minn. June 21, 2022).

But we review *de novo* whether those facts show that an individual engaged in employment misconduct. *Stagg*, 796 N.W.2d at 315. And we review the ULJ’s evidentiary rulings for abuse of discretion. *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 566 (Minn. App. 2001) (stating that evidentiary rulings in administrative proceedings are reviewed for abuse of discretion), *rev. denied* (Minn. Nov. 13, 2001).

Peterson raises two issues on appeal. First, Peterson argues that the ULJ’s determination of aggravated employment misconduct is not supported by substantial evidence because it is based on the probable-cause statement, which is hearsay evidence, and, according to Peterson, is “directly contradicted by [Peterson’s] sworn firsthand testimony.” Second, Peterson argues that the ULJ’s decision rests on unlawful procedure and the ULJ breached their duty to assist parties with the presentation of evidence when they excluded testimony by Peterson’s witnesses. We address each issue in turn.

I. Substantial evidence supports the ULJ’s determination of aggravated employment misconduct.

Aggravated employment misconduct is the “commission of any act, on the job or off the job, that would amount to a gross misdemeanor or felony . . . if the act had a significant adverse effect on the employment.” Minn. Stat. § 268.095, subd. 6a(a) (2024). “A criminal charge or conviction is not necessary to determine aggravated employment misconduct,” but “[i]f an applicant is convicted of a gross misdemeanor or felony, the

applicant is presumed to have committed the act.” *Id.* Peterson acknowledged at the hearing that his criminal charges were pending, and the record does not show whether Peterson was ultimately convicted. Thus, no presumption applies to the ULJ’s decision. We therefore consider whether substantial evidence supports the ULJ’s determination that Peterson committed aggravated employment misconduct.

Peterson makes two arguments, which we discuss in turn. First, Peterson argues that the ULJ’s findings rest on “inherently unreliable” hearsay evidence, specifically, the probable-cause statement. DEED counters that the probable-cause statement was reliable hearsay because it “contains detailed statements from [the witnesses], and corroborating interviews with other office employees,” as well as “statements about the witnesses’ demeanor.”

Peterson’s arguments about the probable-cause statement are unavailing for three reasons. First, Peterson did not challenge the admissibility of the probable-cause statement during the ULJ’s hearing; the exhibit was received by stipulation and with no objection from Peterson. Peterson therefore is raising this issue for the first time on appeal. We generally do not consider issues raised for the first time on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *Peterson v. Ne. Bank–Minneapolis*, 805 N.W.2d 878, 883 (Minn. App. 2011) (applying *Thiele* to an unemployment-benefits appeal and declining to decide an issue that “was not raised before the ULJ”).

Second, even if we consider the admissibility of the probable-cause statement, Peterson cites no binding authority to support his position that a ULJ may not rely on hearsay evidence or that the probable-cause statement is unreliable evidence. Peterson cites

Biretz v. SatCom Marketing, LLC, to argue that “uncorroborated hearsay that is directly contradicted by a Relator’s sworn, firsthand testimony does not constitute ‘substantial evidence.’” No. A11-579, 2011 WL 6141650 (Minn. App. Dec. 12, 2011). But *Biretz* is a nonprecedential opinion and does not bind this court. See Minn. R. Civ. App. P. 136.01, subd. 1(c) (stating that nonprecedential opinions “are not binding authority” but “may be cited as persuasive authority”). More importantly, *Biretz* does not support Peterson’s position. In *Biretz*, the ULJ credited the relator’s sworn firsthand testimony over hearsay evidence. 2011 WL 6141650, at *1-3. This court *reversed*, explaining that “the ULJ’s credibility determination that . . . Biretz’s testimony was more persuasive [than hearsay evidence] is not substantially supported by the record.” *Id.* at *4. We concluded that “[s]ubstantial evidence in the record supports a finding that Biretz was terminated for employment misconduct.” *Id.* at *3.

Third, the ULJ has discretion to rely on hearsay evidence and need not adhere to the Minnesota Rules of Evidence, which allow the admission of hearsay evidence under certain circumstances. The unemployment-benefits statutes provide, in part, that the rules governing evidentiary hearings before a ULJ “need not conform to common law or statutory rules of evidence and other technical rules of procedure.” Minn. Stat. § 268.105, subd. 1(b) (2024). Under DEED’s rules adopted pursuant to that statutory authority, a ULJ “may receive any evidence that possesses probative value, *including hearsay*, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs.” Minn. R. 3310.2922 (2025) (emphasis added). We

conclude that the ULJ acted within their discretion in relying on the probable-cause statement—a detailed summary of witness accounts of Peterson’s conduct.

Second, Peterson contends that the ULJ erred by rejecting Peterson’s own “sworn firsthand testimony.” We understand Peterson’s second argument to challenge the district court’s credibility findings because he urges us to credit his testimony. Peterson also maintains that the ULJ “failed to legally reconcile” credibility conflicts “as required by Minn. Stat. § 268.105, subd. 1a,” and that Peterson’s “firsthand testimony should have outweighed all other forms of evidence.” DEED contends that the record supports the ULJ’s credibility determinations.

This court defers to the ULJ’s credibility determinations, *Ward*, 973 N.W.2d at 651, and does not reweigh record evidence on appeal, *see Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 205 (Minn. App. 2004) (“When parties have presented conflicting evidence on the record, appellate courts must defer to the [fact-finder]’s ability to weigh the evidence; they may not weigh that evidence on review.”), *rev. denied* (Minn. Mar. 30, 2004).

We are mindful that, when the credibility of a witness testifying at a hearing significantly affects the outcome of a decision, the ULJ must state the reasons for crediting or discrediting that testimony. Minn. Stat. § 268.105, subd. 1a(a) (2024) (“When the credibility of a witness testifying in a hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony.”).

Here, the ULJ discredited Peterson's testimony and gave specific reasons, stating that it was "simply not believable" that all the witnesses against Peterson would lie and that it "is unlikely that [the witnesses] would make such serious allegations, placing their safety in jeopardy, if there were not truth to their allegations." We conclude that the ULJ satisfied their obligation to "set out the reason" for discrediting Peterson's testimony. *Id.* We therefore defer to the ULJ's determination that Peterson's testimony was not credible when he denied the conduct described by coworkers and summarized in the probable-cause statement.

Finally, we consider whether the record evidence supports the ULJ's determination that Peterson committed aggravated employment misconduct. While Peterson disputes the ULJ's decision to rely on the probable-cause statement, he does not contend that the facts in the probable-cause statement are not substantial evidence of aggravated employment misconduct. Based on our review, we conclude that the record includes substantial evidence to support the ULJ's determination that Peterson committed aggravated employment misconduct when he threatened and assaulted others, including coworkers, another attorney in the community, and his former girlfriend.

II. The ULJ fairly conducted the evidentiary hearing and satisfied their duty to assist parties with the presentation of evidence.

Peterson argues that the ULJ's decision relied on "unlawful procedure" and that the ULJ failed in their duty to assist parties by denying Peterson's request to call witnesses who, he argues, would have eroded E.S.'s credibility. The ULJ excluded Peterson's proposed witness testimony, explaining that E.S.'s credibility had limited relevance to

determining whether Peterson committed aggravated employment misconduct. The Chief ULJ affirmed this ruling, reviewing each proposed witness's testimony and concluding that the witness testimony offered by Peterson was not relevant and, assuming error, that the proposed testimony would not change the outcome of the ULJ's decision.

A ULJ has a duty to "assist all parties in the presentation of evidence" and to "ensure that all relevant facts are clearly and fully developed." Minn. R. 3310.2921 (2025). DEED argues that, while Peterson was self-represented, he was also "an attorney trained in the law." We disagree with DEED's implied argument that the ULJ had no duty to assist Peterson. Although Peterson is an attorney and presumably is trained to present evidence, the rule setting out a ULJ's duty to assist parties in presenting evidence does not differentiate between represented, self-represented, or attorney self-represented parties. *Id.*

As for the ULJ's decision to exclude Peterson's proposed witness testimony, a ULJ "is not bound by statutory and common law rules of evidence," but may use the "rules of evidence . . . as a guide in determining the quality of evidence offered." Minn. R. 3310.2922. A ULJ has discretion to "exclude any evidence which is irrelevant, immaterial, unreliable, or unduly repetitious." *Ywsyf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 530 (Minn. App. 2007) (quoting Minn. R. 3310.2922). Relevant evidence is evidence having "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401.

We conclude that the ULJ acted within their broad discretion in excluding Peterson's proposed witness testimony. The ULJ stated that E.S.'s credibility had "limited"

relevance because his testimony played a minor role in the proceedings. The record supports the ULJ's reasoning. E.S. reported the two 'paralegals' statements about Peterson's conduct to law enforcement, which initiated an investigation later summarized in the probable-cause statement. The ULJ based the factual findings relevant to whether Peterson committed aggravated employment misconduct on the probable-cause statement—a detailed summary of the law-enforcement investigation and witness statements—not E.S.'s testimony.

The Chief ULJ also examined this issue and explained that the ULJ “only credited parts of [E.S.'s] testimony,” such as when E.S. testified that he heard Peterson threaten E.P. and saw the video of Peterson shooting in the woods. E.S.'s testimony about E.P. and the shooting video was corroborated by other witnesses whose interviews were summarized in the probable-cause statement. The Chief ULJ considered Peterson's proposed witness testimony for each witness, based on the witness's affidavit, and determined that the proposed testimony was not relevant and, if admitted, would not have changed the outcome of the hearing.¹

We agree with the Chief ULJ's analysis of this issue. We do not grant relief on appeal for harmless error in the admission or exclusion of evidence. *See Plowman v.*

¹ Specifically, the Chief ULJ reasoned that (1) the former employee whom Peterson sought to call was “not a current employee of [the law firm] when the events leading to Peterson's termination occurred”; (2) three former clients would have testified about a legal matter that “was not relevant to whether Peterson committed employment misconduct”; and (3) the proposed testimony “would not have shown that [E.S.'s] testimony during the appeal hearing was likely false.” The Chief ULJ also explained that another former client's testimony was irrelevant because the “allegations involving [that client] would not be considered against” Peterson.

Copeland, Buhl & Co., 261 N.W.2d 581, 585 (Minn. 1977) (concluding that the unemployment-appeal tribunal's error in excluding exhibits was harmless because the exhibits were "not necessarily proof of the facts in issue" and the "decision would be affirmed even if the disputed documents were considered"); *Ywswf*, 726 N.W.2d at 530 (concluding that the ULJ's failure to receive a college transcript into evidence did not prejudice the relator and was harmless).

Even assuming the district court erred in excluding Peterson's proposed witness testimony, any error was harmless. The record includes substantial evidence, from sources other than E.S., that Peterson committed aggravated employment misconduct by threatening and assaulting others. Peterson acknowledged sharing the shooting video. And Peterson's proposed testimony was not relevant to determining whether Peterson committed aggravated employment misconduct for the reasons stated by the Chief ULJ. Thus, even if the district court erred in excluding this evidence, Peterson was not prejudiced because the outcome of the proceeding would be unchanged.

In sum, we conclude that substantial evidence supports the ULJ's decision that Peterson committed aggravated employment misconduct because he threatened and assaulted others, including coworkers, another attorney, and his former girlfriend. These are serious violations of the standards of behavior an employer has a right to expect.

Affirmed.