

*This opinion is nonprecedential except as provided by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
A25-1867**

Edward L. Foster-Graham,
Relator,

vs.

Fellowship Recovery, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed September 8, 2026
Affirmed
Smith, Tracy M., Judge**

Department of Employment and Economic Development
File No. 51929440-5

Edward Foster Graham, Mounds View, Minnesota (self-represented relator)

Fellowship Recovery, LLC, Minneapolis, Minnesota (respondent employer)

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

Considered and decided by Beane, Presiding Judge; Smith, Tracy M., Judge; and
Schmidt, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Relator Edward Foster Graham¹ challenges the determination of an unemployment-law judge (ULJ) that he was discharged for employment misconduct after he disclosed private client information in violation of employer policy. Foster Graham asserts that the ULJ erred by determining that he committed employment misconduct. He also argues that the ULJ abused their discretion by denying his request for reconsideration without an additional hearing. We affirm.

FACTS

The following recitation of the facts is drawn from the ULJ's findings of fact and supplemented with the record.

Foster Graham worked for nine months as a licensed alcohol and drug counselor for respondent Fellowship Recovery (Fellowship).² In May 2025, an intern reported to Fellowship's management that, during a group therapy session, Foster Graham disclosed to other members of the group session a client's last name and the fact that the client was incarcerated. During the session, Foster Graham took a phone call from the absent client and disclosed the information to the other members. Soon thereafter, Foster Graham was

¹ The case title on the decision appealed styles appellant's last name as "Foster-Graham." Appellant styles his last name as "Foster Graham" in his appellate brief. The title of this opinion conforms to the title used in the administrative proceedings. *See* Minn. R. Civ. App. P. 143.01 ("The title of the action shall not be changed in consequence of the appeal."). But we follow appellant's preference in the body of the opinion.

² Fellowship did not file a brief in this appeal.

discharged for violating a policy against disclosing private client information. Foster Graham applied for unemployment benefits with respondent Minnesota Department of Employment and Economic Development (DEED), and DEED issued an amended determination of ineligibility, stating that Foster Graham was discharged from employment because of employment misconduct and thus was ineligible for unemployment benefits.

Foster Graham appealed, and a ULJ held an evidentiary hearing. At the hearing, the ULJ received testimony from the CEO and a human resources (HR) representative for Fellowship. The CEO testified that Foster Graham violated company policy by disclosing a client's name and the fact that they were incarcerated. Foster Graham also testified, giving various reasons for the disclosure. First, he claimed that it was someone else in the group who disclosed the client's incarceration status. Foster Graham then explained that, while on the phone with the client, he confirmed the client's last name to the group so that they could order the client a cab. He further explained that he disclosed the name because he was distracted due to problems in his personal life. Foster Graham also alleged that the client gave him permission to disclose the information over the phone and had already personally disclosed his information to the group in the past.

The ULJ filed their findings of fact and decision, determining that Foster Graham was discharged because of employment misconduct. In so doing, the ULJ credited the testimony of the employer's representatives and not Foster Graham's testimony. Foster Graham filed a request for reconsideration along with a written statement in support. Attached to the written statement was an email from the client purporting to give Foster Graham written consent to disclose his information and an affidavit by the client

authenticating the email. The ULJ filed an amended order denying the request for reconsideration and declining to order a new hearing.

This certiorari appeal follows.

DECISION

Under Minnesota Statutes section 268.105, subdivision 7(d)(5) (2024), as relevant here, an appellate court may reverse or modify a ULJ’s decision “if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are . . . affected by other error of law . . . [or] unsupported by substantial evidence.”

Foster Graham argues that the ULJ erred by (1) determining that he was discharged for employment misconduct and (2) denying his request for reconsideration without an additional hearing. We address each argument in turn.

I. The ULJ did not err by determining that Foster Graham was discharged for employment misconduct.

Foster Graham challenges the ULJ’s determination that he was discharged for employment misconduct.

“Whether an employee committed employment misconduct is a mixed question of fact and law.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). “Whether the employee committed a particular act is a question of fact.” *Id.* Appellate courts review the ULJ’s factual findings in the light most favorable to the decision, giving deference to the ULJ’s credibility determinations. *Id.* Appellate courts “will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Id.* “But whether

the act committed by the employee constitutes employment misconduct is a question of law” that is reviewed de novo. *Id.*

Here, the ULJ found that Fellowship’s witnesses were more credible than Foster Graham and found that “Foster-Graham disclosed information about a client’s name and incarceration status to other clients in a group session.” The ULJ found that this conduct was “intentional, negligent, and indifferent and was a serious violation of the employer’s reasonable expectations.” The ULJ concluded that “[t]his incident was employment misconduct.”

Foster Graham argues that, in determining that Foster Graham was discharged for employment misconduct, the ULJ (A) erred in their credibility determinations and factual findings and (B) erred in concluding that his acts constituted employment misconduct.

A. The ULJ’s credibility determinations and factual findings are supported by substantial evidence.

Foster Graham first challenges the ULJ’s credibility determinations and factual findings.

As an initial matter, Foster Graham argues that the ULJ failed to state specific reasons for their credibility determinations and that “[t]he ULJ’s conclusory statement that the employer was ‘more credible’ is legally insufficient.” A ULJ is required to explain “the reason for crediting or discrediting” a witness’s testimony when the testimony significantly affects the outcome of a decision. Minn. Stat. § 268.105, subd. 1a(a) (2024). Here, the ULJ’s order states the following reasons for the credibility findings:

The findings of fact are based primarily on the information provided by [the CEO]. [The CEO’s] testimony

was credible because it was direct, logical, and supported by [the HR representative's] testimony. Foster-Graham's testimony was less credible because he gave inconsistent reasons to explain why he disclosed the client's private information.

Proper factors to consider when assessing a witness's credibility include whether the testimony is direct, corroborated, and consistent with other evidence. *See Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 532-33 (Minn. App. 2007). Because the ULJ employed those factors and explained their reasoning, the ULJ did not fail to sufficiently set out the reasons for their credibility decisions.

We turn to whether the evidence substantially supports the ULJ's credibility determinations and factual findings. Foster Graham argues that the ULJ erred by relying on the testimony of Fellowship's CEO and HR representative. He argues that the CEO was not credible because she did not substantiate her claim that there were multiple incidents of disclosure and that she did not know Foster Graham's salary.³ And he argues that the HR representative made false statements about Fellowship's onboarding training because she was not with the company when Foster Graham was hired and no evidence was submitted about Foster Graham's onboarding. But none of these arguments convince us not to defer to the ULJ's credibility determinations. Moreover, these issues are immaterial

³ For the first time in his reply brief, Foster Graham also argues that the HR representative lacked firsthand knowledge of whether he received an employee handbook and of the incident itself. But "[a] witness at an evidentiary hearing is not required to have firsthand knowledge." *Skarhus*, 721 N.W.2d at 345. Regardless, we decline to address these arguments because they were not raised in Foster Graham's principal brief. *See Ward v. El Rancho Manana, Inc.*, 945 N.W.2d 439, 449 n.10 (Minn. App. 2020), *rev. denied* (Minn. Sept. 29, 2020).

because the ULJ did not make any findings regarding multiple incidents of disclosure, Foster Graham's salary, or the onboarding training.

Foster Graham challenges the ULJ's finding that he disclosed the client's incarceration status. But the ULJ's finding is supported by the CEO's testimony at the hearing. And we defer to a ULJ's credibility determinations that are supported by substantial evidence. *Skarhus*, 721 N.W.2d at 344.

Foster Graham also argues that the ULJ erred in making factual findings because there was a "lack of evidence showing intentional wrongdoing." But the question is not whether Foster Graham intended wrongdoing; it is whether Foster Graham's *conduct* was intentional, negligent, or indifferent. Minn. Stat. § 268.095, subd. 6(a) (2024). The ULJ found that "Foster Graham's conduct in disclosing a client's private information to the other clients was intentional, negligent, and indifferent," and this finding is supported by the testimony of the CEO as well as by Foster Graham's own admissions at the hearing.

Foster Graham argues that his disclosure of client information was "[n]ot prohibited by any clear employer policy."⁴ But the ULJ found that Fellowship "has a policy that prohibits employees from disclosing private client information, such as the client's last name and incarceration status, unless the employee has a legitimate business purpose and

⁴ Foster Graham also argues for the first time in his reply brief that Fellowship policy required employees to answer calls and remain in the room during group sessions and, therefore, answering the client's call during the session could not be misconduct. We decline to consider this argument because it was not properly raised in his principal brief. *See Ward*, 945 N.W.2d at 449 n.10.

the individual receiving the information had a release to receive such information.” Again, this finding is supported by the CEO’s testimony at the hearing.

The ULJ did not err in making credibility determinations and findings of fact.

B. The ULJ did not err by concluding that Foster Graham’s acts constituted employment misconduct.

Second, Foster Graham challenges the ULJ’s determination that his conduct constituted employment misconduct.

Minnesota Statutes section 268.095, subdivision 6(a), defines employment misconduct 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.” “If the conduct for which the applicant was discharged involved 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” *Id.*, subd. 6(d) (2024). Employment misconduct does not include “good faith errors in judgment if judgment was required.” *Id.*, subd. 6(b)(6) (2024).

Foster Graham argues that the disclosure of client information was not misconduct because it was “[a]uthorized by the client in writing.” But the ULJ did not find that the disclosure was authorized, and there is no evidence in the record that the client authorized disclosure in writing. Foster Graham argues that the client email that he submitted with his request for reconsideration constituted valid written consent to disclose his information. But the email was not submitted in Foster Graham’s initial hearing and therefore was not part of the record before the ULJ. Additionally, it could not be considered by the ULJ as a

reason to change the decision when considering the request for reconsideration. *See* Minn. Stat. § 268.105, subd. 2(c) (2024) (“In deciding a request for reconsideration, the [ULJ] must not consider any evidence that was not submitted at the hearing, except for purposes of determining whether to order an additional hearing.”). Without the email, there is nothing in the record supporting Foster Graham’s argument that the client gave written consent.

Foster Graham argues that his disclosure of client information was “[m]ade in good faith.” But a good-faith error in judgment is an exception to employment misconduct only if judgment was required in deciding to take the action. Minn. Stat. § 268.095, subd. 6(b)(6). Whether to disclose confidential information against the employer’s policy is not a decision in which judgment is necessary. Moreover, the ULJ did not find that Foster Graham’s disclosure was made in good faith. To the contrary, the ULJ found that his conduct was “intentional, negligent, and indifferent.” And that finding is supported by the record.

Foster Graham also argues that the disclosure was justified by safety concerns. Relatedly, he argues that disclosure was permitted under applicable federal privacy law because it was “necessary to prevent or lessen a serious threat to health or safety.” But Foster Graham did not raise these safety-related arguments to the ULJ at any stage. Thus, the ULJ did not address them, and these arguments are forfeited on appeal. *See In re A.D.*, 883 N.W.2d 251, 261 (Minn. 2016) (applying *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988), in a certiorari appeal).

Finally, Foster Graham argues that his disclosure was not employment misconduct because “Minnesota law holds that isolated mistakes . . . do not constitute misconduct.” But this misstates the law. While the fact that there was only a single incident “must be considered” by the ULJ, Minn. Stat. § 268.095, subd. 6(d), “[a] single incident can constitute misconduct when an employee deliberately chooses a course of conduct that is adverse to the employer,” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 806 (Minn. 2002). The ULJ found Foster Graham’s disclosure of private client information to be “intentional” and “a serious violation of the employer’s reasonable expectations.” So, the ULJ did not err in determining that the single incident of disclosing private client information constituted employment misconduct because Foster Graham made a deliberate choice adverse to the employer.

In sum, the ULJ did not err by determining that Foster Graham was discharged for employment misconduct.

II. The ULJ did not abuse their discretion by denying Foster Graham’s request for reconsideration without an additional hearing.

Foster Graham argues that the ULJ abused their discretion by not considering the new evidence he submitted with his request for reconsideration and by deciding not to order an additional hearing.

Appellate courts give “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. Upon a request for reconsideration, a reviewing ULJ may “correct any

factual or legal mistake in the decision” or “order an additional hearing when appropriate.”

Minn. Stat. § 268.105, subd. 2(b)(1) (2024). The ULJ must hold an additional hearing

if a party shows that 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.

Minn. Stat. § 268.105, subd. 2(c). “‘Good cause’ for purposes of this paragraph is a reason that would have prevented a reasonable person acting with due diligence from submitting the evidence.” *Id.*

Here, in support of his request for reconsideration, Foster Graham submitted to the ULJ an email from the client that he argues authorized the disclosure of confidential information. The email appears to have been sent from the client to Foster Graham through a friend’s email. In the email, the client describes relapsing after being incarcerated and requests assistance. The email also mentions the support group and says, “If you want to you can share this with them along with this number.” Foster Graham asserted that he had not been able to present the email before because he lost access to his work email and had no way to contact the client but that he “has since found the client and was presented with the email.”

In the amended order denying the request for reconsideration, the ULJ stated:

Foster-Graham does not provide any additional information or evidence as part of his request which causes the ULJ to question the credibility determination. He does not provide any evidence to show that the ULJ relied on false evidence from the employer and that likely false evidence had an effect on the outcome of the decision.

. . . .

Foster-Graham has not provided any information or arguments that require changing the decision or ordering another hearing.

The order did not mention the email or discuss whether there was good cause for not presenting it earlier.

Foster Graham argues that the ULJ abused their discretion by refusing to consider the email. He argues that ULJ was required to reopen the record because the email would likely have changed the outcome and was not available at the time of the hearing.

Although the ULJ did not explicitly discuss the email, we discern no abuse of discretion in the ULJ's decision not to order an additional hearing because the email would not likely have changed the outcome. The ULJ found that Foster Graham was discharged for employment misconduct because he disclosed a client's last name and incarceration status. And while it is true that the client's written authorization could affect this decision, the email that Foster Graham provided would not establish consent. The email contains a single statement expressing that Foster Graham could "share" the email with the group. Even assuming that the email was valid consent to disclose the fact that the client was incarcerated, the client's last name does not appear in the email. So, the email provides no new evidence that the client authorized Foster Graham to disclose the client's last name. It was therefore not an abuse of discretion for the ULJ to determine that Foster Graham had not submitted any new evidence that would change the decision.

Affirmed.