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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-2180**

Antonio F. Bragg,
Relator,

vs.

Fairchild Equipment, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 6, 2026
Affirmed
Cochran, Judge**

Department of Employment and Economic Development
File No. 52010351-3

Antonio F. Bragg, Minneapolis, Minnesota (pro se relator)

Fairchild Equipment, Inc., Green Bay, Wisconsin (respondent employer)

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

Considered and decided by Cochran, Presiding Judge; Ross, Judge; and Bentley,
Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this certiorari appeal, relator Antonio F. Bragg challenges an unemployment-law judge's (ULJ's) determination that he is ineligible to receive unemployment benefits because he was discharged for employment misconduct. We affirm.

FACTS

Bragg worked as a technician for respondent employer Fairchild Equipment, Inc., from December 2018 to April 24, 2025. According to the company handbook, "[t]hree (3) consecutive work days of unexplained absences and/or failure to call in will be regarded as a voluntary resignation. Excessive and recurring absenteeism or tardiness or failure to report a satisfactory reason for any absence will result in disciplinary action up to and including termination." It is undisputed that Bragg signed and acknowledged this policy at the commencement of his employment.

On April 1, 2025, Bragg was arrested and charged by the State of Minnesota with third-degree assault. Following his arrest, Bragg was taken to the Hennepin County jail where he remained until June 24, 2025. It is undisputed that he did not attend work while he was incarcerated.

On April 24, Fairchild sent a letter to Bragg informing him that his "unexplained absences and/or failure to call" while absent from work constituted a violation of the employee handbook policies, resulting in his "voluntary resignation" from Fairchild as of April 21, 2025. On July 9, following his release from jail, Bragg applied for unemployment benefits through respondent Minnesota Department of Employment and Economic

Development (DEED). In his application, Bragg indicated that, on or about April 2, he communicated to his employer that he was incarcerated and would be unable to come to work.

After receiving the application, DEED requested information from Fairchild to make an initial determination as to Bragg's eligibility for unemployment benefits. Fairchild's response noted that Bragg failed to comply with the company attendance policy due to "[three] consecutive workdays of unexplained absences, no show/no call." Fairchild also noted that it "was unable to reach" Bragg. DEED determined that Bragg was ineligible for benefits "because [Bragg] did not report an absence for all or part of a shift, and [Bragg] did not have a good reason for the failure to report," which constituted misconduct.

Bragg administratively appealed the determination. In his request for an appeal, he explained that he was seeking reversal of the ineligibility determination because "[a]bsence from work due to incarceration is not misconduct that will disqualify an employee . . . from establishing eligibility for the receipt of unemployment compensation" and because the allegations of assault against him were false and "he was wrongfully incarcerated." A ULJ held an evidentiary hearing to consider his appeal. No representative of Fairchild attended the hearing, and only Bragg offered testimony.

At the hearing, Bragg testified that he was taken to jail on April 1 following his arrest and that he contacted Fairchild on or about April 2 by calling collect to inform Fairchild that he would not be at work because he was in jail. He explained that he spoke with two points of contact at Fairchild. According to Bragg, Fairchild told him to continue calling in to inform them of his future absences. Bragg also testified that while one contact

from Fairchild answered when he initially called her, she stopped answering his subsequent calls.

In September 2025, the ULJ issued a decision concluding that Bragg was ineligible for unemployment benefits because he engaged in employment misconduct. The ULJ rejected as not credible Bragg's testimony that he notified Fairchild of his absences. Instead, the ULJ made the following findings of fact: "On April 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, and 24, 2025, Bragg was absent from work because he was in jail. He did not notify the employer about his absences even though he had access to a phone." The ULJ further found that: "On April 24, 2025, Fairchild Equipment Inc. discharged Bragg from employment because he was absent from work due to being in jail every day he was scheduled to work in April 2025 and failed to notify the employer." The ULJ also provided reasons for the ULJ's determination that Bragg was not credible, stating "it was not persuasive that Bragg would not allege that he notified the employer about his absences in any of his many written arguments that were submitted prior to the hearing." The ULJ further noted that it was "not credible that the employer's written submissions . . . would say the employer was unable to reach Bragg, and Bragg was being discharged due to unexplained absences, if the communication Bragg alleged during his testimony occurred." The ULJ further concluded that Bragg's absence from work due to being in jail and subsequent failure to notify Fairchild were circumstances within his control because if Bragg would "not have violated the law and assaulted [the alleged victim], he would not have been in jail." Based on these findings, the ULJ concluded that

Bragg's conduct of assault and failure to contact Fairchild constituted misconduct, and therefore Bragg was ineligible for unemployment benefits.

Bragg filed a request for reconsideration. In support of his request, Bragg submitted additional documents including a call log from the Hennepin County jail that he claimed showed at least eleven attempted calls to his employer during his incarceration. At DEED's request, Fairchild submitted a letter and documentation addressing Bragg's request for reconsideration. In the letter, Fairchild explained: "Bragg initially communicated with Fairchild during the early days of his incarceration; however, communication subsequently ceased." Fairchild also noted that between March 31, 2025, and the end of Bragg's employment on April 21, 2025, "Fairchild made multiple good faith attempts to contact [Bragg] to obtain an explanation for his absences. Unfortunately, no further communication was received." Fairchild also explained that it did not attend the evidentiary hearing before the ULJ because it did not receive notice of the hearing until after the hearing date.

In a written order denying Bragg's request for reconsideration, the ULJ affirmed the September 2025 ULJ determination that Bragg is ineligible for unemployment benefits. The reconsideration order states the ULJ "fully considered the request and determined that the decision . . . is factually and legally correct." The order acknowledges that Bragg (and Fairchild) provided information on reconsideration, but concludes that "Bragg has not provided any information or arguments that require changing the decision or ordering another hearing."

Bragg appeals.

DECISION

Bragg raises four arguments on appeal: (1) the ULJ made an erroneous factual finding when the ULJ found Bragg did not contact his employer while incarcerated, (2) the ULJ erred by determining that Bragg's absences from work due to incarceration constitute employment misconduct, (3) the ULJ erred by treating the state's criminal complaint as "established fact," and (4) the ULJ erred by not ruling that the employer's failure to appear constituted a "default." We construe Bragg's arguments as raising two overarching legal arguments: (1) that the ULJ's decision was not supported by substantial evidence in view of the hearing record as submitted and (2) that Fairchild's failure to attend the hearing constituted a default against the employer and in favor of Bragg on the question of eligibility for unemployment benefits.¹ We address each argument in turn.

When reviewing a ULJ's decision, this court may affirm the decision or remand for further proceedings. Minn. Stat. § 268.105, subd. 7(d) (2024). We may also reverse or modify the ULJ's decision when the relator's substantial rights have been prejudiced because, among other reasons, the decision is affected by an error of law or not supported by substantial evidence in the record. *Id.*, subd. 7(d)(1)-(5). Based on the applicable standard of review, we conclude Bragg's arguments do not warrant reversal.

I. The ULJ's decision that Bragg engaged in employment misconduct is supported by substantial evidence in the hearing record.

An employee who is discharged due to employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2024). For purposes of

¹ Bragg does not challenge the ULJ's denial of his request for a new hearing.

unemployment benefits, employment misconduct is defined 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.” Minn. Stat. § 268.095, subd. 6(a) (2024). Whether an employee committed employment misconduct presents a mixed question of law and fact. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). On appeal, we “review the ULJ’s factual findings in the light most favorable to the decision and should not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them.” *Id.* (quotation omitted); *see also Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016). In reviewing findings of fact, we defer to a ULJ’s credibility determinations so long as the ULJ sets “out the reason for crediting or discrediting” testimony. Minn. Stat. § 268.105, subd. 1a(a) (2024); *see also Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006). 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).

The ULJ found two independent bases to conclude that Bragg committed employment misconduct: (1) Bragg’s failure to notify his employer of his absences in accordance with the employer’s policy and (2) Bragg’s alleged assault of the victim, as set forth in the criminal complaint. We focus on the first basis and conclude that the ULJ’s decision was supported by substantial evidence.

An absence due to incarceration is not per se employment misconduct. *Jenkins v. Am. Exp. Fin. Corp.*, 721 N.W.2d 286, 292-93 (Minn. 2006). However, “when

an applicant does not report to work due to incarceration and does not contact the employer until after missing work, it is likely that this will constitute misconduct.” *Petracek v. Univ. of Minn.*, 780 N.W.2d 927, 930 (Minn. App. 2010) (citing *Jenkins*, 721 N.W.2d at 291). And a single absence without permission from an employer may constitute misconduct. *See Del Dee Foods, Inc. v. Miller*, 390 N.W.2d 415, 417 (Minn. App. 1986) (stating that a single absence from work may constitute misconduct when the employee has not received permission to be absent).

Bragg argues that the ULJ made an erroneous factual finding when the ULJ found that he did not notify Fairchild about his absences from work while in jail. In support of his argument, Bragg focuses primarily on evidence filed with his motion for reconsideration, including jail call logs. This argument misses the mark because our review of the ULJ’s factual findings is limited to whether the factual findings are reasonably supported by substantial evidence from the evidentiary hearing. *See* Minn. Stat. § 268.105, subd. 7(d)(5); *Fay v. Dep’t of Emp. & Econ. Dev.*, 860 N.W.2d 385, 387 (Minn. App. 2015). Under the applicable standard of review, we may not consider evidence filed as part of a motion for reconsideration that was not submitted at the hearing. Minn. Stat. § 268.105 subd. 2(c) (2024) (explaining that “[i]n deciding a request for reconsideration, the unemployment law judge must not consider any evidence that was not submitted at the hearing, except for purposes of determining whether to order an additional hearing”). Put differently, in considering whether the ULJ’s factual findings are clearly erroneous, we may not consider Bragg’s jail call logs or Fairchild’s acknowledgment on reconsideration

that Bragg initially communicated with Fairchild but then ceased doing so.² Instead, to determine whether substantial evidence supports the ULJ's factual findings and ultimate determination that Bragg engaged in misconduct, we must limit our consideration of the ULJ's factual findings to the evidence from the hearing record.

The hearing record establishes that Fairchild had a policy that required employees to call if they were going to miss work and that Bragg understood that failure to call in for three consecutive days would result in his termination. We agree with the ULJ's determination that Fairchild had the right to reasonably expect Bragg to continue to call throughout his incarceration to report his absences. *See* Minn. Stat. § 268.095, subd. 6(a) (defining 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”). We therefore turn to whether the ULJ's specific findings regarding whether Bragg violated the policy are supported by substantial evidence. To determine whether an agency decision is supported by substantial evidence, we consider “whether the agency has adequately explained how it derived its conclusion and whether that conclusion is reasonable on the basis of the record.” *In re NorthMet Project Permit to Mine Application*, 959 N.W.2d 731, 749 (Minn. 2021) (quotation omitted). “[S]ubstantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” *Id.*

² We observe that Bragg does not challenge the ULJ's denial of his request for a new hearing. We also note here that the evidence submitted in his request for reconsideration indicates that he failed to call Fairchild for three consecutive workdays in violation of company policy.

In the order denying eligibility, the ULJ found “[f]rom April 1, 2025, until June 24, 2025, Bragg was in jail.” The ULJ further found that: “On April 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, and 24, 2025, Bragg was absent from work because he was in jail. He did not notify the employer about his absences even though he had access to a phone.” And the ULJ found that Fairchild discharged Bragg from his employment on April 24, 2025, because Bragg “was absent from work due to being in jail every day he was scheduled to work in April 2025 and [Bragg] failed to notify the employer.” In support, the ULJ explained that these “findings of fact were based on the most likely sequence of events considering [DEED’s] records and the credible portions of Bragg’s testimony.” The ULJ also determined that “Bragg’s testimony that he properly notified the employer . . . was not credible.”

In making the credibility determination, the ULJ provided detailed reasoning for discrediting Bragg’s testimony that he notified Fairchild of his absences while in jail. The ULJ emphasized that Bragg did not allege in his written appeal of DEED’s ineligibility determination that he notified his employer about his absences. The ULJ also relied on Fairchild’s written submissions made at DEED’s request, which stated that “the employer was unable to reach Bragg, and Bragg was being discharged due to unexplained absences.” These reasons are sufficient to satisfy the statutory requirement that the ULJ “set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1a(a). We therefore defer to the ULJ’s credibility determination. *See Lamah v. Doherty Emp. Grp., Inc.*, 737 N.W.2d 595, 601 (Minn. App. 2007) (“[T]he ULJ was in the best position

to assess credibility and weigh the evidence, and we will not second-guess those judgments.”).

Because our review of the ULJ’s factual findings is limited to the evidence presented at the hearing, and because we defer to the ULJ’s determination of Bragg’s credibility, we conclude that the ULJ’s factual findings regarding Bragg’s failure to notify Fairchild of his multiple consecutive absences from work while in jail in April 2025 are supported by substantial evidence in the hearing record. We further conclude the ULJ’s factual findings support the conclusion that Bragg engaged in employment misconduct by failing to notify Fairchild on three or more consecutive days of his absence from work in violation of the company policy. As discussed above, even a single unexplained absence from work can constitute employment misconduct. *Del Dee Foods, Inc.*, 390 N.W.2d at 417. In sum, substantial evidence supports the ULJ’s determination that Bragg engaged in employment misconduct because Bragg violated Fairchild’s policy requiring notification of absences from work.

II. Fairchild’s failure to appear at the hearing did not constitute a default.

Bragg also argues that Fairchild’s failure to appear at the evidentiary hearing before the ULJ constituted a default against Fairchild and in favor of Bragg on the question of his eligibility for unemployment benefits. Bragg contends that “[u]nder Minnesota law, when the employer does not appear, default applies.” This argument is unavailing for two reasons.

First, Bragg did not argue in his request for reconsideration that the ULJ erred by deciding his eligibility on the merits rather than granting a default ruling in his favor based

on Fairchild’s failure to appear. Consequently, this argument is forfeited. *See Peterson v. Ne. Bank Minneapolis*, 805 N.W.2d 878, 883 (Minn. App. 2011) (stating an issue that is “not raised before the ULJ, . . . is not properly before this court on review”); Minn. Stat. § 268.105, subd. 7 (2024) (providing that this court’s review is from the ULJ’s decision on reconsideration).

Second, even assuming this argument is properly before us on appeal, Bragg misstates the legal standard. There is no statute or rule that provides for an automatic default determination of unemployment benefit eligibility in favor of the employee if an employer does not attend an evidentiary hearing. *See generally id.*, subd. 1 (2024). Rather, once an applicant administratively appeals DEED’s initial denial of eligibility, the chief ULJ is to set a hearing and send notice to the applicant and the employer. *Id.* At the hearing, each party may examine and cross-examine witnesses and present exhibits.³ Minn. R. 3310.2921 (2025). “The hearing must be conducted by an unemployment law judge as an evidence-gathering inquiry, without regard to a burden of proof.” *Id.* The ULJ must then “make written findings of fact, reasons for decision, and decision” based upon the evidence presented during the hearing. Minn. Stat. § 268.105, subd. 1a(a). But an employer’s evidence is not necessary for the determination of eligibility. *See* Minn. Stat. § 268.069, subd. 2 (“The commissioner has the responsibility for the proper payment of unemployment benefits regardless of the level of interest or participation by . . . an employer in any determination or appeal.”). Indeed, an employer’s failure to challenge an

³ We further note that an unemployment claim is not a claim against the employer; rather, the claim is against DEED. Minn. Stat. § 268.069, subd. 2 (2024).

employee's eligibility for benefits has no bearing on whether benefits are paid. *Rasidescu v. Comm'r of Econ. Sec.*, 644 N.W.2d 504, 506 (Minn. App. 2002), *rev. denied* (Minn. Jul. 16, 2002). In sum, there is no reason to reverse based on the absence of Fairchild representatives at the evidentiary hearing.

Affirmed.