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Court of Appeals of Minnesota.

Randall RAHN, Relator,

v.

MIDWAY FARM EQUIPMENT, INC., Respondent,

Department of Employment and Economic Development, Respondent.

A19-1318

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Department of Employment and Economic Development, File No. 37321542

Attorneys and Law Firms

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

UNPUBLISHED OPINION

BRYAN, Judge

***1** Relator appeals the unemployment law judge's decision that relator's discharge for employment misconduct makes him ineligible to receive unemployment benefits. We affirm.

FACTS

From April 2010 until his discharge on April 8, 2019, relator Randall Rahn worked for respondent Midway Farm Equipment, Inc. (Midway). After Rahn refused to make additional deliveries, Midway terminated his employment. Rahn then applied for unemployment benefits with respondent Department of Employment and Economic Development (DEED). DEED initially determined that Rahn was ineligible for benefits because his discharge resulted from employment misconduct. Rahn appealed that determination and an unemployment law judge (ULJ) held a hearing to review Rahn's eligibility for benefits. The following issues require our attention: (1) Rahn's job duties; (2) Rahn's dispute with Midway regarding a damaged lawn mower; and (3) the reasonableness of Midway's employment expectations in light of Rahn's diagnosis of cardiomyopathy and the circumstances surrounding Rahn's refusal to make deliveries.

First, the merits of Rahn's request for unemployment benefits required the ULJ to determine whether Rahn's job duties included driving and making deliveries. At the hearing, both Rahn and Midway's General Manager, Jerry Haberman, testified that Rahn's job duties included delivery driving. For instance, Rahn acknowledged that exhibit six contained an accurate list of his job duties. This exhibit states that Midway considered it a "plus" for maintenance employees "to have a [commercial driver's license], to help with equipment delivery during busy times." In addition, Haberman testified that Rahn performed "some delivery work" as part of his job duties at Midway. The ULJ found that "[h]elping make deliveries was part of Rahn's job."

Second, Rahn's request also required the ULJ to make findings regarding a damaged lawn mower. At some point in the spring of 2018, Rahn was moving a crated lawn mower using a forklift. As he lifted the crate, the lawn mower became unbalanced and fell over, damaging the lawn mower. Pursuant to Midway's policy, Midway sent Rahn a bill for $300 as a result of the damage. Rahn initially offered to pay for the damage to the lawn mower, but after looking at the employee handbook and the Minnesota statutes, Rahn changed his mind. Midway continued to bill Rahn for the damage through the day of his discharge, almost a year later. Rahn disputed the

bill, and the ULJ found that Rahn "was upset over the mower repair bill" when he refused to make deliveries.

Third, the ULJ received evidence and made determinations regarding the reasonableness of Midway's employment expectations in light of Rahn's health issues and the circumstances surrounding Rahn's refusal and discharge. In April 2018, Rahn was diagnosed with hypertrophic cardiomyopathy. As a result, he could no longer drive commercial vehicles unless and until he obtained an updated health card from the Minnesota Department of Transportation. Shortly after his diagnosis, Rahn informed Haberman that his "health card expired." At the evidentiary hearing, Haberman stated that in some cases, like diabetes, a person can obtain a current health card as long as they manage and treat their medical conditions. Haberman and Rahn discussed the possibility of Rahn obtaining a current health card and commercial driver's license with medical restrictions. Rahn testified that he "was supposed to have gone to renew it with the restrictions," but did not. Rahn did not tell Haberman that he neglected to obtain a current commercial driver's license, and Haberman did not "follow-up to see if [Rahn] got the health card."

***2** After Midway's primary delivery driver retired, Rahn agreed to fill in. Haberman testified that, based on their conversations in 2018, he assumed that Rahn had a current health card and commercial driver's license when Rahn agreed to make the deliveries. Rahn testified that he made the deliveries "illegally" to be a "good employee" and "just help[ ] out." Rahn drove commercial vehicles for Midway without a commercial driver's license and completed about "a week and a half worth of deliveries" before his refusal and termination on April 8, 2019. On that day, Midway asked Rahn to make another delivery. Rahn refused, expressing his disappointment regarding how Midway handled the damaged lawn mower. In the text message to Haberman refusing to make the requested delivery, Rahn stated the following: "Just wanted to let you know I'm being billed for that lawnmower loyalty only runs one way with you but I'm done being your intermittent truck driver I'm not doing it anymore I've told [two others] no more driving." Haberman then talked to Rahn in his office, where Rahn refused to make deliveries. In his testimony, Rahn acknowledged that when he refused to make any more deliveries, he did not mention his health or his lack of a current health card or commercial driver's license. Instead, Rahn testified that he refused to do any more deliveries because of the bill he received for the damaged lawn mower.

The ULJ found that Rahn provided only one reason for his refusal, the damaged lawn mower: "Rahn acknowledged during the hearing the reason he refused to make deliveries was not because of his license or health card. Rather, the reason was because Haberman wanted payment for damages Rahn previously agreed to pay for." The ULJ further determined that Rahn's refusal "displayed clearly a serious violation of the standards of behavior [Midway] had the right to reasonably expect." Thus, the ULJ concluded that Rahn was ineligible for unemployment benefits. Rahn requested reconsideration and the ULJ affirmed. This certiorari appeal followed.

DECISION

Relator challenges the ULJ decision for the following four reasons: (1) Rahn argues that his refusal did not constitute employment misconduct because his job description did not include making deliveries; (2) Rahn argues that the evidence does not support the ULJ's finding regarding the reason why Rahn refused to make deliveries; (3) Rahn argues that his refusal did not constitute employment misconduct because Midway's expectation was unreasonable; and (4) Rahn argues that Midway violated the Minnesota Whistleblower Act when it discharged him.

The State of Minnesota provides workers who are unemployed through no fault of their own a temporary partial wage replacement. Minn. Stat. § 268.03 (2018). Workers discharged as a result of their own misconduct, however, cannot receive this partial wage replacement. Minn. Stat. § 268.095, subd. 4(1) (2018). The statute defines "employment misconduct" as "any intentional, negligent, or indifferent conduct, on the job or off the job that displays clearly: (1) a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee; or (2) a substantial lack of concern for the employment." *Id.*, subd. 6(a) (2018). [1] In determining eligibility for the unemployment benefits, judges must also consider whether the conduct resulted from the worker's "inability or incapacity," *id.*, subd. 6(b)(5) (2018), and whether the conduct involved "only a single incident,"

id., subd. 6(d) (2018). On certiorari appeal from a ULJ's decision, this court may affirm or remand the case for further proceedings. Minn. Stat. § 268.105, subd. 7(d) (2018). This court may also reverse and modify the decision of a ULJ if the decision violates the constitution, exceeds the statutory authority or jurisdiction of the department, is made upon unlawful procedure, is affected by other error of law, is unsupported by substantial evidence, or is arbitrary or capricious. *Id.*

Whether an employee committed employment misconduct presents a mixed question of law and fact. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). Whether an employee committed a particular act is a question of fact, but whether a particular act constitutes misconduct is a question of law. *Id.*; *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). We view the ULJ's findings of fact in the light most favorable to its decision, and "will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Questions of law are reviewed de novo. *E.g.*, *Abdi v. Dep't of Emp't & Econ. Dev.*, 749 N.W.2d 812, 814-15 (Minn. App. 2008).

I. Rahn's Job Description

***3** Rahn argues that the ULJ erred when it found that his job included making deliveries. We conclude that substantial evidence supports the ULJ's finding.

As noted above, we will not disturb factual findings of the ULJ when the evidence substantially supports them. At the evidentiary hearing, Rahn acknowledged that a list of his job duties included the statement that Midway considered it "a plus" for a person in his position "to have a [commercial driver's license], to help with equipment delivery during busy times." Haberman also testified that Rahn performed "some delivery work" as part of his job duties at Midway. Rahn had also performed this very type of work in the "week and a half" preceding his refusal and discharge. The evidence in this case substantially supports a finding that Rahn's job description included making deliveries.

II. Rahn's Reason for Refusal to Make Deliveries

Rahn argues that the ULJ erred when it found that Rahn refused to make deliveries because of how Midway addressed the damaged lawn mower and not because of any health concerns. We affirm the ULJ's decision.

On appeal, Rahn and Midway identify two competing reasons for his refusal to make deliveries. On one hand, Rahn argues that he refused to make deliveries because his cardiomyopathy precluded him from driving commercial vehicles. On the other hand, Midway argues that Rahn refused to make deliveries because he was upset about how Midway handled the damaged lawn mower. The record supports the ULJ's finding that Rahn refused to make the delivery "because Haberman wanted payment for damages Rahn previously agreed to pay for." The record also supports the ULJ's corresponding finding that Rahn did not refuse "because of his license or health card."

For instance, Haberman testified that Rahn was "upset because he was billed for some lawnmower parts ... and he came in and refused to do the delivery work apparently over us charging him for the lawnmower parts." In addition, when Rahn communicated his refusal in a text message, his own words show that he refused Midway's request only because of the lawn mower: "Just wanted to let you know I'm being billed for that lawnmower loyalty only runs one way with you but I'm done being your intermittent truck driver I'm not doing it anymore I've told [two other employees] no more driving." Rahn never mentioned his cardiomyopathy, his driver's license, or his lack of a health card. Instead, Rahn based his refusal only on the lawn mower issue. Finally, Rahn's testimony at the hearing confirmed that he refused to do any more deliveries because of the bill he received for the damaged lawn mower, and not because of any health or driving concerns.

Based on this record, there is substantial evidence to support the ULJ's finding that Rahn refused to perform the requested deliveries because he was upset over the bill for the damaged lawn mower and not because of his health.

III. Midway's Reasonable Employment Expectations

Rahn's appeal also requires us to review whether Rahn's refusal to perform the requested deliveries constitutes "employment misconduct." *Stagg*, 796 N.W.2d at 315. After a

de novo review of the record, we conclude that Rahn's refusal violated Midway's reasonable expectations for his behavior.

***4** To address this issue, we consider what standards of behavior Midway could reasonably expect of Rahn. As noted above, the statute defines "employment misconduct" as "any intentional, negligent, or indifferent conduct, on the job or off the job that displays clearly: (1) a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee; or (2) a substantial lack of concern for the employment." Minn. Stat. § 268.095, subd. 6(a). An employee's refusal "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); *see also McGowan v. Exec. Express Transp. Enters., Inc.*, 420 N.W.2d 592, 594, 596 (Minn. 1988) (ruling that a delivery driver's intentional refusal to pick up employer's medication was misconduct); *Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 207 (Minn. App. 2004) (stating that an employee commits misconduct by intentionally refusing to perform a task), *review denied* (Minn. Mar. 30, 2004); *Bibeau v. Resistance Tech., Inc.*, 411 N.W.2d 29, 32 (Minn. App. 1987) (ruling that an employee who deliberately disobeyed an employer's "stupid" instructions to perform quality-control checks committed misconduct); *Daniels v. Gnan Trucking*, 352 N.W.2d 815, 816 (Minn. App. 1984) (determining that an employee's refusal to unload a truck was "a deliberate act of insubordination" that constituted misconduct).

In this case, the record reflects that Midway's primary delivery driver had recently retired and Midway had not yet found a new driver. As a result, Midway had requested that Rahn make deliveries. This request was reasonable under the circumstances for three primary reasons. First, both Rahn and Haberman testified that shortly after Rahn received the cardiomyopathy diagnosis, the two of them discussed the possibility of Rahn obtaining a current health card and commercial driver's license with medical restrictions. Rahn admitted that he "was supposed to have gone to renew it with the restrictions," but he did not do so. Second, Rahn testified that he never told Haberman about his failure to renew his license and health card. Third, Rahn agreed to fill in for the retired delivery driver and had completed (in his own words) about "a week and a half worth of deliveries." Because of these three reasons, Haberman reasonably assumed that Rahn had obtained the updated health card and Haberman reasonably expected Rahn to continue making deliveries just as he had for the previous week and a half. Rahn's refusal in this case constituted employment misconduct as defined in section 268.095, subdivision 6(a).

IV. Minnesota Whistleblower Act

Rahn also argues that Midway violated the Minnesota Whistleblower Act when it discharged him. This argument lacks merit.

First, Rahn did not make any argument regarding the Minnesota Whistleblower Act before the ULJ, and we do not consider new arguments on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Second, the Minnesota Whistleblower Act permits employees to file a lawsuit for wrongful discharge of employment. *Nelson v. Productive Alts., Inc.*, 715 N.W.2d 452, 454-55 (Minn. 2006). Rahn submits no authority suggesting that the Minnesota Whistleblower Act applies in the context of his claim for unemployment benefits, and we consider such arguments waived on appeal. *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (stating that an assignment of error in a brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection); *see also, e.g.*, *State Dep't. of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed issue).

Third, even assuming the issue was properly before this court, the evidence substantially supports the ULJ's findings that preclude relief under the Whistleblower Act. The Whistleblower Act prohibits the discharge of an employee when the following two elements exist: (1) the employee "refuses an employer's order to perform" because that employee objectively believes the employer's request "violates any state or federal law;" and (2) the employee "informs the employer that the order is being refused for that reason." Minn. Stat. § 181.932, subd. 1(3) (2018). Here, the ULJ found that Rahn refused to make the requested delivery because of the way the damaged lawn mower was handled, not out of a concern about the status of his health card. In addition, Rahn never informed Midway that the requested delivery violated any law or regulation. Therefore, the Whistleblower Act does not apply to these facts.

***5 Affirmed.**

All Citations

Not Reported in N.W. Rptr., 2020 WL 1671693

Footnotes

1 The version of Minn. Stat. § 268.095, subd. 6(a), in effect at the time of the ULJ's decision was amended in 2019 to remove "a substantial lack of concern for the employment" from the definition of employment misconduct. *See* 2019 Minn. Laws 1st Spec. Sess. ch. 7, art. 7, § 9, at 1371. This change has no bearing on our analysis.