



Pluta v. SMSC Gaming Enterprises

2007 | Cited 0 times | Court of Appeals of Minnesota | April 17, 2007

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2006).

Affirmed

Considered and decided by Willis, Presiding Judge, Klaphake, Judge, and Collins, Judge.¹

UNPUBLISHED OPINION

Relator William J. Pluta challenges a decision by an unemployment law judge (ULJ) that affirms on reconsideration an earlier decision that relator was disqualified from receiving unemployment benefits because he was discharged for employment misconduct after using profanity and throwing a remote control in the direction of two co-workers. Relator asserts that he was "unjustly denied" benefits because his employer, respondent SMSC Gaming Enterprise, prohibited him from accessing records or interviewing witnesses to the incident that led to his firing. He further disagrees with the ULJ's characterization of his actions and insists that he did not throw the remote control, but merely "tossed" it, and that he used profanity only once, not numerous times.

Because relator acknowledges that he used profanity and tossed the remote control in the direction of two co-workers, and because this conduct displays clearly a serious violation of the standards of behavior that an employer has a right to reasonably expect, we affirm the ULJ's determination that relator committed employment misconduct and was therefore disqualified from receiving unemployment benefits.

DECISION

This court reviews the ULJ's decision to determine whether the findings, inferences, conclusion, or decision are "(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious." Minn. Stat. § 268.105, subd. 7(d) (2006).

I.

The issue of whether an employee committed employment misconduct is a mixed question of fact



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and law. Schmidgall v. FilmTec Corp., 644 N.W.2d 801, 804 (Minn. 2002). Whether the employee committed a particular act is a question of fact on which our review is limited. Scheunemann v. Radisson S. Hotel, 562 N.W.2d 32, 34 (Minn. App. 1997). But whether the employee's actions constitute employment misconduct is a question of law, which this court reviews de novo. Id.

Here, the ULJ accepted the testimony of relator's co-workers, who testified that relator was angry, swore several times, and threw the remote control so hard that it bounced off the wall and almost hit one of the co-workers in the head. The ULJ chose to reject relator's testimony, in which relator attempted to minimize the severity of his actions. See Skarhus v. Davanni's, 721 N.W.2d 340, 344 (Minn. App. 2006) (stating that this court defers to ULJ's credibility determinations).

Employment misconduct is defined to include "any intentional, negligent, or indifferent conduct, on or off the job . . . that displays clearly 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) (2006). An employer has the right to expect an employee to act peaceably and not engage in conduct that endangers other people's safety. See Shell v. Host Int'l Corp., 513 N.W.2d 15, 17 (Minn. App. 1994) ("An employer has the right to expect behavior from employees that is not violent."); Hayes v. Wrico Stamping Griffiths Corp., 490 N.W.2d 672, 675 (Minn. App. 1992) ("An employer has the right to expect its employees not to engage in conduct that seriously endangers people's safety."); Hines v. Sheraton Ritz Hotel, 349 N.W.2d 329, 330 (Minn. App. 1984) ("An employer has a right to expect employees not to physically fight at work.").

Thus, Minnesota courts have determined that an employee commits misconduct when he swears at and pushes his supervisor, Shell, 513 N.W.2d at 16; hits a co-worker in the head with a snowball, Wilson v. Comfort Bus Co., 491 N.W.2d 908, 909, 911 (Minn. App. 1992), review denied (Minn. Jan. 15, 1993); or becomes angry, accelerates his vehicle out of the parking lot, and nearly collides with another vehicle, Hayes, 490 N.W.2d at 873. While the use of profanity alone may not rise to the level of misconduct in certain cases, an employee who uses profanity in conjunction with some other act of aggression or physical confrontation generally commits employment misconduct. See, e.g., Isse v. Alamo Rent-A-Car, 590 N.W.2d 137, 138 (Minn. App. 1999) (swearing at co-worker and pushing him against wall), review denied (Minn. Apr. 20, 1999); Tester v. Jefferson Lines, 358 N.W.2d 143, 145 (Minn. App. 1984) (yelling unprovoked obscenities and blocking buses during strike), review denied (Minn. Mar. 13, 1984). We therefore conclude that the ULJ here did not err in determining that relator's conduct rose to the level of employment misconduct.

Even if we were to accept relator's testimony that he did not intend to throw the remote so hard that it bounced off the wall and almost hit one of his co-workers, his actions were still "intentional" in the sense that they were deliberate, and not accidental. See Vargas v. Nw. Area Found., 673 N.W.2d 200, 204 (Minn. App. 2004). And, even if relator were to argue that his conduct fell within the "single-incident" exception, misconduct can still occur during a single incident if, as in this case, the employer's interest in maintaining a cooperative, respectful workplace was significantly and



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adversely affected. See Minn. Stat. § 268.095, subd. 6(a) ("Inefficiency, inadvertence, simple unsatisfactory conduct, or a single incident that does not have a significant adverse impact on the employer . . . [is] not employment misconduct.").

II.

On reconsideration, relator claimed that he was denied access to witnesses and records by SMSC Gaming. The ULJ denied relator's request for reconsideration, noting that relator had failed to subpoena any witnesses or request any documents. See Minn. R. 3310.2914, subp. 1 (2005) (subpoenas are available to compel production of documents or appearance of witnesses).

A ULJ must "assist unrepresented parties in the presentation of evidence" and "ensure that relevant facts are clearly and fully developed." Minn. R. 3310.2921 (2005). The ULJ here fulfilled his duties to relator. Relator was given ample opportunity to raise issues and present evidence, but he did not complain or otherwise notify the ULJ that he wanted access to additional evidence or witnesses. Moreover, because the evidence sought by relator would not have contradicted his admission that he used profanity and tossed the remote control in the direction of two co-workers, presentation of that evidence would not have changed the conclusion reached by the ULJ and by this court on appeal, that relator committed employment misconduct.

The decision of the ULJ is therefore affirmed.

Affirmed.

1. Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

