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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1023**

Donna J. Sitarski,
Relator,

vs.

Allina Health System,
Respondent,

Department of Employment and
Economic Development,
Respondent.

**Filed April 2, 2018
Affirmed
Jesson, Judge**

Department of Employment and
Economic Development
File No. 35344249-3

Donna J. Sitarski, Minneapolis, Minnesota (pro se relator)

Allina Health System, c/o TALX UCM Services, Inc., St. Louis, Missouri (respondent employer)

Lee B. Nelson, Ryann M. Sparrow, Department of Employment and Economic Development, St. Paul, Minnesota (for respondent Department)

Considered and decided by Reyes, Presiding Judge; Schellhas, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

JESSON, Judge

Relator Donna Sitarski was determined ineligible for unemployment benefits because her employer terminated her for misconduct, based on repeated periods of excessive downtime during working hours and errors in her work. We affirm.

FACTS

Relator Donna Sitarski worked at respondent Allina Health from 2001 to her employment termination in 2017. The last position Sitarski held was Senior Patient Access Specialist, which primarily required her to call patients and collect personal information in order to complete preregistration for medical appointments. Sitarski was required to log on to Allina Health's computer system while working, and use that system and her work phone to complete her job duties.

Allina Health conducted an audit of its employees for dates in February and March 2016. Audits flag employee downtime, time when an employee is logged on to the system but not using the phone or computer for more than 15 minutes. That audit showed downtime for Sitarski on four dates for a total of more than eight hours.

Following the audit, Sitarski's supervisor filed a corrective action and performance improvement plan which required "immediate and sustained improvement," and informed Sitarski that she needed to report to her supervisor any work not tracked in the system that took 30 minutes or more. The improvement plan stated that failure to meet and maintain these expectations would result in termination. Allina Health then monitored Sitarski's productivity and, starting in July 2016, Sitarski met with her supervisor on a monthly basis.

These meetings would review Sitarski's productivity, as well as any errors she made in her work. Sitarski showed some improvement in August 2016 when her downtime decreased, but it increased again in September, and it dramatically increased in November.

In addition to this downtime, Sitarski made multiple errors. On December 16, 2016, Sitarski failed to appropriately verify patient information. On December 26, 2016, Sitarski incorrectly billed insurance instead of workers' compensation on a case, resulting in a patient complaint. And on January 18, 2017, Sitarski failed to complete benefits information on a case.

Shortly thereafter, on January 23, 2017, Allina terminated Sitarski's employment. The termination paperwork noted Sitarski's excessive downtime, her errors, and stated that her "performance is below the team and department standards and senior level expectations" and that she was terminated due to "continued performance issues."

Sitarski filed for unemployment benefits but was determined ineligible by the Department of Employment and Economic Development (DEED) because she was terminated for employment misconduct. Sitarski pursued an administrative appeal of DEED's decision and an unemployment-law judge (ULJ) heard the case. Sitarski and her supervisor testified, and nine exhibits were introduced including the improvement plans.

In her testimony, Sitarski explained that the original downtime in February and March 2016 was because of time she spent attempting to address a personal rental issue. Sitarski acknowledged that she now understands she should have "probably [taken] some time off of work" to deal with that situation. As for the downtime in the following months, Sitarski explained that with the exception of work meetings or functions, she was working

at her desk, or took leave for her or her minor son's health, or was working on activities that are not tracked by the audit. Sitarski explained that she kept her own logs of her work for twelve weeks, including breaks and absences, to show her work. Due to patient privacy concerns, these logs were not provided to the ULJ.

Sitarski acknowledged her error with verifying patient information. But Sitarski testified that she did not fully recall the situation on December 26 where there was incorrect billing. And as for the error on January 18, Sitarski testified she was not at work that day. Responding to the assertion that she was not following company procedures, Sitarski explained that the procedures changed frequently.

Sitarski's supervisor testified that the vast majority of Sitarski's work should have been completed using the phone and computer system, both tracked by Allina Health's audits. While the supervisor acknowledged some activities, such as reviewing emails, were not tracked in the system, those activities should take no more than five minutes and the audit only flags downtime of fifteen minutes or more. If Sitarski completed work activities that would not be tracked in the audits, she was asked to inform her supervisor. And when Sitarski attended work events, or was absent from work, she should have been logged out of the system. While Sitarski kept her own logs of her work for a time, she was informed those logs would not override the audit's findings, and told to cease creating the logs as they were unnecessary and time consuming. Ultimately, Sitarski's supervisor stated that Sitarski was terminated because she "was getting paid for not working through down time and lack of productivity. Additionally, her work quality continued to decrease resulting in complaints from patients and the clinical sites that we support."

The ULJ issued her decision in April 2017 and found “[t]he preponderance of the evidence supports that Sitarski’s actions displayed clearly a serious violation of the standards of behavior that the employer had a right to reasonably expect of her or a substantial lack of concern for the employment.” The ULJ also determined that when there was conflicting testimony, the supervisor’s testimony was more credible than Sitarski’s testimony. The ULJ found that Sitarski was discharged because of employment misconduct and therefore ineligible for unemployment benefits under Minnesota Statutes section 268.095 (2016). Sitarski requested reconsideration, and the ULJ affirmed the initial decision.

Sitarski appeals.

D E C I S I O N

In her pro se brief, Sitarski challenges the ULJ’s determination that she is ineligible for unemployment benefits because (1) the ULJ’s factual findings are unsupported by the record, and (2) her actions do not constitute employment misconduct. We address each argument in turn.

The ULJ’s factual findings are supported by the record.

Sitarski disputes multiple factual findings made by the ULJ. We review an ULJ’s findings of fact “in the light most favorable to the ULJ’s decision and will rely on findings that are substantially supported by the record.” *Fay v. Dep’t of Emp’t & Econ. Dev.*, 860 N.W.2d 385, 387 (Minn. App. 2015). This court also defers to the credibility determinations made by the ULJ. *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008).

The ULJ determined that the “most likely explanation of [Sitarski’s] time gaps is that [she] was not doing any work.” This finding is supported by Sitarski’s supervisor’s testimony that the majority of Sitarski’s work should have been completed using the tracked computer system or phones. It is further supported by the testimony and documentation in the improvement plan that Sitarski should report any work activities outside that system lasting 30 minutes or more to her supervisor, as well as her failure to do so. And when Sitarski was absent for an appropriate reason, whether due to a company activity or illness, she should have been logged out of the system. The ULJ’s finding is also consistent with Sitarski’s admission that she was completing personal tasks during work time during the initial downtime in February and March.

The ULJ also found that Sitarski committed serious errors, errors that were “avoidable if Sitarski followed the processes that were in place.” This is supported by the record. All three described errors were a part of Sitarski’s supervisor’s testimony, and documented in the termination paperwork submitted as an exhibit to the ULJ.

Sitarski contests these findings, arguing (1) there is work she can do as a part of her employment that is not tracked for audits; (2) she was either doing that non-tracked work, or left work for an appropriate reason, during each recorded downtime; (3) she was absent from work on a date it was recorded that she made an error; and (4) her supervisor is not credible.

We are not persuaded. Sitarski supports her arguments by asserting she personally logged all of her activities. But Sitarski was instructed not to create logs of her work to demonstrate appropriate activities. Rather, she was instructed to log onto Allina Health’s

system and to report any activities outside the system directly to her supervisor, which she failed to do. While Sitarski testified that she may have been away from her work station for appropriate reasons at different times, her supervisor testified that she should have been logged out of the system if she was absent. Lastly, as to conflicting testimony between Sitarski and her supervisor, we defer to the ULJ's determination that the supervisor's testimony is "more credible than Sitarski's testimony, because it is a more convincing, detailed, and likely explanation of events," thus refuting Sitarski's argument that her supervisor is not credible.¹ *See Peterson*, 753 N.W.2d at 774 (stating that appellate courts defer to a ULJ's credibility determinations).

Viewing the evidence in this case in the light most favorable to the ULJ's decision, we determine that the facts relied on by the ULJ were not erroneous and are substantially supported by the record.

Sitarski's actions qualify as employment misconduct.

We turn next to whether Sitarski's conduct constituted employment misconduct, making her ineligible for unemployment benefits. *See* Minn. Stat. § 268.095, subd. 4 (2016). We review a ULJ's determination that an applicant is ineligible for unemployment benefits de novo. *Fay*, 860 N.W.2d at 387.

Employment misconduct is intentional, negligent, or indifferent conduct that clearly displays either "a serious violation of the standards of behavior the employer has the right

¹ Sitarski also asserts throughout her brief that she had FMLA approval to cover absences—times when she was not present at work, as opposed to downtime while she was present at work. While the original improvement plan in March 2016 included issues with absences, the supervisor testified that absences were not part of the basis for Sitarski's termination.

to reasonably expect of the employee” or “a substantial lack of concern for the employment.” Minn. Stat. § 268.095, subd. 6(a) (2016). We have previously held that when a supervisor tells an employee that certain employment conduct is inappropriate, and the employee continues to engage in the conduct, that constitutes employment misconduct. *See Brown v. Nat’l Am. Univ.*, 686 N.W.2d 329, 333 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). The Minnesota Supreme Court has also held that “[a]s a general rule, refusing 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).

Sitarski was paid to work for significant periods of time when she was not performing the work of a Senior Patient Access Specialist. She continued this pattern of downtime after being informed and repeatedly reminded that this conduct was inappropriate. Sitarski was specifically made aware that this conduct could lead to termination. And she made errors by failing to confirm patient information, and by billing the wrong entity. Collectively, these actions are a “serious violation of the standards of behavior the employer has the right to reasonably expect.” See Minn. Stat. § 268.095, subd. 6(a). As a result, Sitarski is ineligible for unemployment benefits.

Affirmed.