STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1559

Vangyi Chongtoua,
Relator,

vs.

Bdote Learning Center,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed June 30, 2025
Affirmed
Larson, Judge

Department of Employment and Economic Development
File No. 50514412-3

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

Considered and decided by Larson, Presiding Judge; Bentley, Judge; and Kirk, Judge.*

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

NONPRECEDENTIAL OPINION

LARSON, Judge

Relator Vangyi Chongtoua appeals from an unemployment-law judge's (ULJ) determination that he was ineligible for unemployment benefits because respondent-employer Bdote Learning Center (Bdote) discharged him for employment misconduct. Because the record supports the ULJ's decision, we affirm.

FACTS

Chongtoua worked as a middle-school math teacher at Bdote from September 2022 until his discharge in February 2024. One week prior to discharge, Chongtoua's supervisor, who was also Bdote's administrative director, drafted a "final written warning" relating to complaints made against Chongtoua over the previous five months. The final written warning included complaints that Chongtoua: failed to submit timely disciplinary records; used improper language toward students; and had poor classroom management. The final written warning stated that if Chongtoua did not follow the articulated next steps, his employment may be terminated. But, before the administrative director could give Chongtoua the final written warning, Bdote received a complaint that a student had observed pornography on Chongtoua's school computer during class (the pornography allegation). Bdote placed Chongtoua on paid administrative leave and informed the police.

On February 19, 2024, Chongtoua, the administrative director, and a Bdote board member, had a meeting via videoconference to discuss the complaints against Chongtoua. At the meeting, the administrative director presented Chongtoua with the final written warning, in addition to a new document that listed 15 complaints against Chongtoua by

date and category, including the pornography allegation (the complaint document). The administrative director and board member informed Chongtoua that all the reports and the investigation were presented to Bdote's executive committee, and the executive committee planned to recommend Chongtoua's discharge to Bdote's board—the ultimate decisionmaker.

On February 22, 2024, Chongtoua received a termination letter from Bdote. The termination letter stated that Bdote terminated Chongtoua's employment agreement effective February 19, 2024, and cited the Code of Ethics for Minnesota Teachers, Minn. R. 8710.2100, subp. 2(D), (I) (2023).[1] Subpart 2(D) provides: "A teacher shall take reasonable disciplinary action in exercising the authority to provide an atmosphere conducive to learning." And subpart 2(I) states: "A teacher shall not knowingly make false or malicious statements about students or colleagues."

After receiving the termination letter, Chongtoua requested that Bdote send him a reason-for-termination letter. On March 4, 2024, Bdote sent the reason-for-termination letter:

> The basis for [Bdote's] decision is your failure to meet [Bdote's] legitimate expectations regarding the performance of your job duties, *including, but not limited to*, the following:
>
> 1. On or about January 8, you accessed pornographic materials . . . using [Bdote's] laptop, during the school day, while at school, and in the presence of a student.

[1] The termination letter and Bdote's handbook refer to the previous numbering scheme for the Code of Ethics for Minnesota Teachers, Minn. R. 8700.7500. The rule has since been renumbered. *See* 39 Minn. Reg. 803, 822 (Dec. 15, 2014); Minn. R. 8710.2100 (2023). Because the substance of the rule has not changed, we refer to the current version.

> 2. On or about January 8, you attempted to conceal your access of pornographic materials on [Bdote's] laptop by wiping your internet browser history from [Bdote's] laptop.
>
> Based upon your failure to meet the expectations of your position, *including those described above*, [Bdote] made the decision to terminate your at-will employment.

(Emphasis added.) Along with the reason-for-termination letter, Bdote provided Chongtoua with his personnel file that contained information relating to the 14 other complaints listed in the complaint document.

Chongtoua applied for unemployment benefits on March 27, 2024. In his attachments, he included the reason-for-termination letter and a police report regarding the pornography allegation. The police report stated that Bdote "had a tech firm look at [the] computer in house and found no porn, but [did find] a search history that said 'how to erase search history.'"[2]

Respondent Department of Employment and Economic Development (DEED) requested information from Bdote regarding Chongtoua's application for unemployment benefits. When asked why Bdote discharged Chongtoua, Bdote specifically identified the pornography allegation. But Bdote also provided DEED with information regarding the 14 other complaints listed in the complaint document.

On April 9, 2024, DEED determined that Chongtoua was not eligible for unemployment benefits because Bdote discharged him for employment misconduct. In making its determination, DEED specifically referenced the pornography allegation.

[2] For reasons unrelated to this appeal, the police could not conduct their own investigation into the laptop's contents.

Chongtoua appealed, arguing that Bdote's investigation never uncovered pornography and, because Bdote's documents indicated he was only discharged for the pornography allegation, he was not discharged for employment misconduct.

The ULJ held an evidentiary hearing and heard testimony from the administrative director and Chongtoua. The ULJ also received as evidence Bdote's internet policy and employee handbook, Chongtoua's employment terms and conditions, Chongtoua's administrative leave notice, the reason-for-termination letter, the police report, the final written warning, the complaint document, and screenshots from the school's laptop showing Chongtoua's internet history.

The administrative director testified regarding the reason for Chongtoua's discharge. She testified that Chongtoua was discharged for "[m]ultiple reasons," including: (1) "not submitting discipline reports for students," after receiving both verbal and written warnings; (2) four instances of "fail[ing] to cease [abusive] language or indifference or rudeness and/or disorderly antagonistic language toward a student," after receiving a warning; (3) "poor classroom management"; and (4) the pornography allegation. The ULJ asked the administrative director why the reason-for-termination letter only described the pornography allegation, and the administrative director responded that the other complaints are "partially . . . in there" because the letter "sa[id] performance of your job duties." The ULJ also asked why Bdote only highlighted the pornography allegation in its response to DEED. The administrative director described the pornography allegation as "the final straw" and the board's "main concern." The administrative director acknowledged at the evidentiary hearing that Bdote never found pornography on Chongtoua's computer. In his

testimony, Chongtoua denied the pornography allegation, but otherwise admitted to most of the complaints listed in the final written warning and the complaint document.

The ULJ affirmed DEED's decision that Chongtoua did not qualify for unemployment benefits because he was discharged for employment misconduct. The ULJ determined that the administrative director's testimony was largely credible and, accordingly, found that Chongtoua was discharged for all of the reasons outlined in the complaint document. The ULJ reasoned that the board "more likely than not" knew about the numerous complaints against Chongtoua "and that all the complaints played a role in [the board's] decision" to discharge him. The ULJ also relied on the "including, but not limited to" language in the reason-for-termination letter to support the determination. Despite this, the ULJ made findings in favor of Chongtoua regarding the pornography allegation. The ULJ found that Chongtoua credibly testified "that he did not watch pornography" and that the additional evidence Bdote submitted did not support the conclusion that the pornography incident occurred. Chongtoua requested reconsideration, and the ULJ affirmed the decision.

Chongtoua appeals.

DECISION

Chongtoua challenges the ULJ's decision that he was ineligible for unemployment benefits. When reviewing the ULJ's decision, we may affirm the decision or remand for further proceedings. Minn. Stat. § 268.105, subd. 7(d) (2024). Alternatively, we may reverse or modify the ULJ's decision when it may have prejudiced relator because the

decision, among other things, is unsupported by substantial evidence.[3] *Id.*, subd. 7(d)(5). Substantial evidence is "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Dourney v. CMAK Corp.*, 796 N.W.2d 537, 539 (Minn. App. 2011) (quotation omitted).

Chongtoua disputes the ULJ's determination that he was discharged for employment misconduct. Broadly, he argues the ULJ's finding that he was discharged for all the reasons listed in the complaint document is unsupported by substantial evidence because Bdote *only* discharged him for the pornography allegation. According to Chongtoua, the ULJ's determination that the pornography incident did not occur means that the ULJ could not conclude he was discharged for employment misconduct because the pornography allegation was the sole reason for his discharge.

When an employer discharges an employee for employment misconduct, the employee is disqualified from unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2024); *see also Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 27 (Minn. App. 2007). "Whether an employee engaged in employment misconduct presents a mixed question of law and fact." *Wichmann*, 729 N.W.2d at 27. "We view the ULJ's factual findings in the light most favorable to the decision, giving deference to the credibility

[3] Chongtoua also cites the "arbitrary and capricious" standard, *see* Minn. Stat. § 268.105, subd. 7(d)(6), but only makes conclusory arguments regarding the application of this standard. An assignment of error based on "mere assertion" without argument or supporting authority is waived. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971).

determinations made by the ULJ." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted). "In doing so, we will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Id.* (citing Minn. Stat. § 268.105, subd. 7(d) (Supp. 2005)). But we review whether the facts show that an employee engaged in employment misconduct de novo. *See id.*

"Employment misconduct means 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). "As 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). An employee's knowing violation of an employer's directives constitutes employment misconduct because such actions evince willful disregard of the employer's interests. *Id.* at 806. "This is particularly true when there are multiple violations of the same rule involving warnings or progressive discipline." *Id.* at 806-07.

Chongtoua first argues the ULJ's finding that he was discharged for all the reasons listed in the complaint document is unsupported by substantial evidence because the ULJ did not give sufficient weight to the reason-for-termination letter. According to Chongtoua, because Minn. Stat. § 181.933 (2024) required Bdote to provide "the truthful reason for the termination"[4] and Bdote only referenced the pornography allegation, the ULJ should have determined Chongtoua was only discharged for the pornography

[4] Chongtoua does not make any legal arguments about the meaning of this statute. Therefore, this issue is waived. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982).

allegation. *See Lumpkin v. N. Cent. Airlines, Inc.*, 209 N.W.2d 397, 400-01 (Minn. 1973) (upholding determination that discharged employee was eligible for unemployment benefits based on lack of evidence supporting that misconduct occurred, including "[n]o other reasons for termination [being] specified in employer's notice" and no relevant misconduct testimony being provided).

But we have previously concluded that an employer satisfied section 181.933 where the employee was provided with other documents, in addition to the reason-for-termination letter, that allowed the employee to reasonably ascertain the reason for the discharge. *See Deli v. Univ. of Minn.*, 511 N.W.2d 46, 50-51 (Minn. App. 1994), *rev. denied* (Minn. Mar. 23, 1994). Here, the reason-for-termination letter specifically listed the pornography allegation, but prefaced the list with the phrase "*including, but not limited to*, the following." (Emphasis added.) The reason-for-termination letter then concluded with the broad statement: "Based upon your failure to meet the expectations of your position, *including those described above*, [Bdote] made the decision to terminate your at-will employment." (Emphasis added.) Bdote attached Chongtoua's personnel file to the reason-for-termination letter, which contained the details regarding the 14 other complaints. Therefore, we do not discern that the district court gave inappropriate weight to the reason-for-termination letter when it made its finding that Chongtoua was discharged for multiple incidents of misconduct.

Chongtoua argues second that the ULJ's determination that he was discharged for multiple incidents of misconduct is unsupported by substantial evidence because the ULJ relied too heavily on the administrative director's testimony. When a ULJ relies heavily

upon a witness's credibility, the ULJ "must set out the reason for crediting or discrediting" their testimony. Minn. Stat. § 268.105, subd. 1a (2024). Here, the ULJ did precisely that. The ULJ dedicated an entire section of the order to making credibility determinations about the administrative director's testimony. The findings cover the administrative director's testimony about the complaints made against Chongtoua, the reasons for Chongtoua's discharge, Bdote's policies, the training Chongtoua received, and the pornography allegation. The ULJ fulfilled the statutory requirement, *see id.*, and we defer to those credibility determinations, *Skarhus*, 721 N.W.2d at 344.

Finally, Chongtoua relies on *Hanson v. Department of Natural Resources*, 972 N.W.2d 362 (Minn. 2022), to support his argument that the ULJ's determination that he was discharged for multiple incidents is unsupported by substantial evidence.[5] In *Hanson*, the supreme court explained that the employer's reasons for discharge, as outlined in testimony, were "not inconsistent with the termination letter, because the letter was silent as to the [employer's] reasons. [And relator] present[ed] no authority for the proposition that silence as to the reason for termination [was] tantamount to inconsistency with a later-stated reason." *Hanson*, 972 N.W.2d at 376.

We conclude the ULJ's decision is consistent with *Hanson*. Here, Bdote's termination letter[6] cited to the ethics-code provisions that Chongtoua violated, including

[5] We note that *Hanson* addressed a claim under the Minnesota whistleblower act, Minn. Stat. § 181.932, subd. 1(1) (2020), not an individual's eligibility for unemployment benefits. *See* 972 N.W.2d at 365.

[6] Chongtoua asserts that reliance on the termination letter is erroneous because it is outside the record. But, as Chongtoua acknowledges, "[p]ieces of the letter were read into the record." And an evidentiary hearing is "an evidence-gathering inquiry" that provides the

the provisions regarding a teacher's responsibility to take proper "disciplinary action," Minn. R. 8710.2100, subp. 2(D), and a teacher's obligation not to "knowingly make false or malicious statements about students," Minn. R. 8710.2100, subp. 2(I). Those provisions clearly align with the other complaints made against Chongtoua, in particular his failure to submit timely disciplinary records and use of improper language toward students.[7] Then, in the reason-for-termination letter, Bdote specifically said the reasons for his discharge "include[d], but [were] not limited to," the pornography allegation. Bdote then broadly concluded that it discharged Chongtoua "[b]ased upon [his] failure to meet the expectations of [his] position, including [the pornography allegation]." Finally, the administrative director testified consistent with both letters, stating that Chongtoua was discharged for all the incidents listed in the complaint document. She also explained Bdote's language in the reason-for-termination letter, highlighting the broad phrasing. Therefore, consistent with *Hanson*, we conclude that Bdote's termination letter, Bdote's reason-for-termination letter, and the administrative director's testimony all consistently support the conclusion that Chongtoua was discharged for multiple incidents of misconduct.

ULJ with broad authority to "ensure that all relevant facts are clearly and fully developed." Minn. R. 3310.2921 (2023). By eliciting testimony about the contents of the termination letter, the ULJ was fulfilling this duty and did not err when it considered the information. *See Skarhus*, 721 N.W.2d at 345 (explaining ULJ's authority "to conduct a hearing without conforming to the rules of evidence" and consider relevant testimony).

[7] Chongtoua argues that the termination letter provides little support for the ULJ's determination that he was discharged for all the reasons listed in the complaint document because the referenced ethics provisions could have solely applied to the pornography allegation. But we must view the record in the light most favorable to the ULJ's decision. *See Skarhus*, 721 N.W.2d at 344. And those particular ethics provisions align with the other complaints made against Chongtoua.

For these reasons, we conclude the ULJ's determination that Chongtoua was discharged for multiple incidents of misconduct is supported by substantial evidence in the record. We, therefore, affirm the ULJ's decision that Chongtoua was discharged for employment misconduct and ineligible for unemployment benefits.

Affirmed.