STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0487

Koneta Andrew,
Relator,

vs.

Range Regional Health Services,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed October 21, 2013
Reversed
Chutich, Judge

Department of Employment and Economic Development
File No. 30432843-3

Thomas F. Andrew, Aaron R. Bransky, Andrew & Bransky, P.A., Duluth, Minnesota (for relator)

Range Regional Health Services, Hibbing, Minnesota (respondent employer)

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

Considered and decided by Kirk, Presiding Judge; Kalitowski, Judge; and Chutich, Judge.

U N P U B L I S H E D O P I N I O N

CHUTICH, Judge

Relator Koneta Andrew challenges the unemployment-law judge's determination that she was ineligible for unemployment benefits because she was terminated for employment misconduct. Because we conclude that relator's conduct was not employment misconduct as defined in Minnesota Statutes section 268.095, subdivision 6 (2012), we reverse.

FACTS

In 2004, Andrew began working at Range Regional Health Services (Range) as a licensed practical nurse. She worked as a nurse in the area of obstetrics and gynecology, providing nursing care for patients and assisting the physicians. In 2012, after conducting a random audit of patient records viewed by Range employees, Range discovered that Andrew had briefly accessed the medical records of four elderly men for whom she was not the assigned nurse. Range then terminated Andrew's employment for violating the Health Insurance Portability and Accountability Act of 1996 (HIPAA), a federal law designed in part to protect patient privacy. Andrew applied for unemployment benefits, and the Department of Employment and Economic Development found her ineligible. Andrew appealed, and an unemployment-law judge held a telephonic hearing.

At the hearing, Gina Prebeck, manager of Range's clinic nursing department, testified that Range discharged Andrew for three separate HIPAA violations: (1) Andrew's unpermitted access on four occasions to patients' medical records for which

she was not the providing nurse; (2) a comment Andrew made to a patient regarding the pregnancy of a co-worker; and (3) Andrew's unpermitted access to her own medical records without first obtaining a release. The hearing focused primarily on the first two alleged reasons for termination.

Lynn Hachey, Range's human resources generalist, testified that Range has a broad policy that requires employees to view records only for a legitimate business purpose. Range employees are informed of this policy through a PowerPoint presentation shown to all employees upon hire and at an annual meeting to highlight the importance of adhering to HIPAA requirements. Range updated the 2012 version shown to all employees in March 2012. Andrew acknowledged that she had knowledge of Range's policy prohibiting access to patient records without a legitimate business purpose. The 2012 PowerPoint did not mention accessing one's own records as a HIPAA violation, however.

Concerning an employee's own medical records, Prebeck stated that Range also has an "organizational policy that [employees] do not look up our own medical records just to be looking them up. [Employees] need to follow the same process as everybody else for getting their information, meaning they have to go to medical records and get a release and follow protocol." Range did not produce the policy for the hearing; nor did it elaborate on the purpose for the policy. Andrew testified that the policy was never brought to her attention and that she never received a warning about accessing her own medical records. Further, in the eight years Andrew worked for Range, she never received a reprimand or any type of disciplinary action.

On January 17, 2013, the unemployment-law judge issued her findings of fact and decision that Andrew was ineligible for unemployment compensation. The unemployment-law judge credited Andrew's testimony concerning the first two reasons for termination—accessing other patients' records and a comment to a patient about a co-worker—and found no employment misconduct on these grounds. Specifically, the judge found that Andrew inadvertently accessed the medical reports of the male patients and looked at them for only one to two minutes before she realized her error and immediately logged off. But because the unemployment-law judge found that Andrew knew or had reason to know of the policy prohibiting employees from viewing their personal medical records, the judge concluded that Andrew's conduct in accessing her own medical records violated standards of behavior that Range had the right to reasonably expect.

Andrew requested reconsideration, and the unemployment-law judge affirmed, reiterating her credibility determinations. This appeal by writ of certiorari followed.

D E C I S I O N

On a certiorari appeal, this court may reverse or modify a decision of an unemployment-law judge "if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusions, or decision are . . . unsupported by substantial evidence in view of the entire record." Minn. Stat. § 268.105, subd. 7(d)(5) (2012). "Whether an employee committed employment misconduct is a mixed question of fact and law." *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, which will be affirmed if the record provides

substantial evidence to support the unemployment-law judge's findings. *Sykes v. Nw. Airlines, Inc.*, 789 N.W.2d 253, 255 (Minn. App. 2010). Whether the act is employment misconduct is a question of law, which this court reviews de novo. *Peterson*, 753 N.W.2d at 774.

To be ineligible for unemployment benefits, Andrew must have been discharged for "employment misconduct," which is defined, in relevant part, 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 . . . ." Minn. Stat. § 268.095, subd. 4, 6(a) (2012). The unemployment-law judge determines eligibility without regard to a burden of proof. *See* Minn. Stat. § 268.031, subd. 1 (2012). "The unemployment-insurance scheme is for the benefit of persons attached to the labor market but unemployed through no fault of their own. . . . To effectuate that end, courts narrowly construe statutory provisions that disqualify a person from unemployment benefits." *Halvorson v. Cnty. of Anoka*, 780 N.W.2d 385, 388 (Minn. App. 2010) (citations omitted); Minn. Stat. §§ 268.03, subd.1, .031, subd. 2.

Here, Range made it clear that it terminated Andrew for HIPAA violations and cited three ways that Andrew allegedly violated its HIPAA-related policies. The hearing focused primarily on Andrew's impermissible access of four patients' records and an allegation that Andrew made a comment regarding a co-worker's pregnancy, but the unemployment-law judge exonerated Andrew on these allegations, finding no employment misconduct. The unemployment-law judge's finding of employment

misconduct was based solely on Andrew accessing her own medical records three times during one week when she was trying to reach her doctor about a laboratory result.

Even accepting that Range had a policy against accessing one's own records and that Andrew "should have known of these policies," we cannot conclude as a matter of law that Andrew's conduct was employment misconduct sufficient to disqualify this long-term employee from receiving unemployment benefits. Range produced no evidence at the hearing to show that viewing one's own records is a HIPAA violation, and the unemployment-law judge made no such finding. An employee cannot be denied unemployment benefits for a reason other than the reason that formed the basis for termination; here, Range stated that it fired Andrew for HIPPA violations. *See Hanson v. C.W. Mears, Inc.*, 486 N.W.2d 776, 780 (Minn. App. 1992) (where employment was terminated based on employer's general feeling the employee could not be trusted, the employee could not be denied benefits based on alleged misconduct that was not the basis for termination), *review denied* (Minn. July 16, 1992).

Moreover, the violation must be "serious." Minn. Stat. § 268.095, subd. 6(a). The seriousness of any policy violation here is diminished where Andrew accessed her own records and not another patient's. No actual harm or risk of harm in exposing private information occurred when Andrew consulted her own medical records.[1] Range was not required to contact any patients to inform them that their records had been accessed, the standard procedure for a records violation. In addition, Andrew had no previous

[1] We note that many medical providers encourage patients to access their own medical records online.

reprimands for this behavior, and no evidence in the record suggests that her consultation of her own records was frequent or lengthy. Finally, we note that we are not addressing whether Range should have terminated Andrew for violation of its policy, but whether, once terminated, Andrew meets the statutory definition of employment misconduct. *See Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 806 (Minn. 2002).

In sum, we conclude that Andrew's consultation of her own medical records does not show "a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee" that would meet the definition of employment misconduct under Minnesota Statutes section 268.095, subdivision 6(a)(1). Accordingly, we reverse the unemployment-law judge's determination that Andrew is ineligible for unemployment benefits.

Reversed.