

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2294**

Sharon Branch,
Relator,

vs.

Bemis Company, Inc.,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed August 29, 2011
Affirmed
Stauber, Judge**

Department of Employment and Economic Development
File No. 25989564-3

Sharon Branch, Plymouth, Minnesota (pro se relator)

Bemis Company, Inc., Neenah, Wisconsin, (respondent employer)

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

Considered and decided by Kalitowski, Presiding Judge; Wright, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

In this certiorari appeal, relator challenges the decision by the unemployment-law
judge (ULJ) that she was ineligible for unemployment benefits because she had been

discharged for misconduct after disruptive conduct at a meeting. Relator contends that her behavior at the meeting did not constitute misconduct. We affirm.

FACTS

Relator Sharon Branch worked full-time as an office administrator for respondent Bemis Company, Inc. (Bemis) from March 31, 2008, through August 17, 2010. Relator had a history of inappropriate behavior at work. This behavior included inappropriate outbursts and difficulty getting along with coworkers.

Sometime prior to January 2009, while relator was undergoing training, she screamed that her trainers “were treating her like a dumb n--ger.” Relator denied making the comment, stating that her coworkers did not want to work with her and that the person who reported her statement “had struggled training me just like all of the other people did.” In January 2009, relator told a coworker that she “better keep another fellow employee under watch because [the employee] was irritating [relator].” The coworker considered this to be a “threatening type of communication.” During the same meeting, relator screamed and swore at the coworker. The coworker testified that relator was “yelling about everything and it was very, very bizarre.” Relator received a written warning for the incident.

Relator was counseled or warned for her behavior on at least four other occasions during 2009. A termination summary submitted by Bemis indicates that relator was counseled for “inappropriate (shouting and being confrontational) behavior when confronting a coworker,” “inappropriate, disruptive behavior during a meeting,” “berat[ing] a coworker,” and “refus[ing] to follow instructions from a coworker.” In a

January 2010 performance review, relator was instructed by human resource manager Paul Toso that she needed to improve on her “disruptive and confrontational” behavior. Toso also told relator that she “needs to learn how to control her emotions, which have created an uncomfortable working environment in the office.”

On August 16, 2010, a coworker filed a complaint against relator, alleging that relator tried to blame her for a billing mistake that relator herself had made. Toso and Bill Zenner, a general manager, held a meeting with relator to discuss the complaint. Toso asked relator for her version of the story and relator responded by laughing and refusing to comment. She told Toso and Zenner that she was “tired of this” and wanted to go home. When the managers again asked for her side of the story, relator began to get upset. She raised her voice and began yelling, “Jesus Christ.” The managers asked relator to stop raising her voice, but to no avail. One coworker testified that she overheard relator shouting during the meeting and considered calling 911 because she considered relator’s tone to be threatening.

When relator continued to raise her voice and become confrontational, Toso told her that they would have to continue the meeting the next day when she had calmed down. Relator left the meeting and continued to be “disruptive by going down to the conference room, yelling and crying.” Several employees provided statements saying that relator continued to yell throughout the office. Relator eventually left the office and went home for the day. The following day, the decision was made to terminate relator’s employment. Relator was informed of the decision on August 18, 2010.

Relator established a benefits account with respondent Minnesota Department of Employment and Economic Development (DEED). A department adjudicator determined that she was eligible for benefits. Bemis appealed this determination, and a ULJ held a de novo hearing. The ULJ found that relator was discharged due to unprofessional behavior and insubordination and is therefore ineligible for unemployment benefits. This resulted in an overpayment of \$3,180. Relator filed a request for reconsideration, and the ULJ affirmed. This certiorari appeal followed.

D E C I S I O N

When reviewing the decision of a ULJ, this court may affirm the decision, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced. Minn. Stat. § 268.105, subd. 7(d) (2010). Whether an employee engaged in employment misconduct presents a mixed question of law and fact. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether a particular act constitutes employment misconduct is a question of law, which we review de novo. *Id.* But whether an employee committed a particular act is a question of fact. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court reviews the ULJ's factual findings "in the light most favorable to the decision." *Id.* In doing so, we "will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Id.*

An employee who is discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). "Employment misconduct means 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) (2010). Employment misconduct does not include inefficiency or inadvertence, simple unsatisfactory conduct, conduct an average reasonable employee would have engaged in under the circumstances, poor performance because of inability or incapacity, or good-faith errors in judgment. *Id.*, subd. 6(b)(2)–(6) (2010). This definition of employment misconduct “is exclusive and no other definition applies.” *Id.*, subd. 6(e) (2010).

Relator appears to argue on appeal that the conduct cited by the ULJ did not occur and that, even if it did, it does not constitute employment misconduct. There is sufficient evidence in the record to sustain the ULJ’s finding that the conduct occurred. Toso testified at the hearing about relator’s conduct during and after the meeting on August 16, as well as the other instances of unprofessional and disruptive behavior. Toso read statements from employees who witnessed relator’s behavior following the August 16 meeting. Bemis also introduced a termination summary detailing the instances where relator was counseled or written up for her behavior. The ULJ found that “[t]he employer’s testimony was detailed, persuasive, and offered a more probable sequence of events than [relator’s].” The ULJ further found that “the employer had no apparent motivation to fabricate the events.”

“When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the ULJ must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1(c)

(2010). The ULJ did so here, and we must defer to the ULJ's credibility determinations. *Skarhus*, 721 N.W.2d at 345.

We also conclude that relator's actions constitute employment misconduct. Relator had been counseled and warned about her unprofessional behavior on multiple occasions leading up to her discharge. This behavior included being disruptive and confrontational, yelling at her coworkers, and failing to follow instructions. At the August 16 meeting, relator acted insubordinately by laughing at the complaint and refusing to cooperate with her managers or answer their questions. Relator yelled and refused to lower her voice after her managers repeatedly requested that she do so. Although the meeting took place behind closed doors, employees could hear relator yelling and being insubordinate to the managers. After walking out of the meeting, she continued to yell inside the office and disrupt her coworkers.

An employee's refusal to abide by the employer's reasonable policies ordinarily constitutes employment misconduct. *Schmidgall*, 644 N.W.2d at 804; *see also Snodgrass v. Oxford Props., Inc.*, 354 N.W.2d 79, 80 (Minn. App. 1984) (holding that an employee's insubordinate behavior can constitute employment misconduct). Bemis had the right to expect relator to act professionally and refrain from inappropriate and disruptive behavior, and relator's actions constitute a serious violation of a standard of behavior Bemis was entitled to expect of her. *See* Minn. Stat. § 268.095, subd. 6(a)(1). Given the repeated warnings relator was given regarding her disruptive and unprofessional behavior, relator's conduct also displayed a substantial lack of concern for the employment. *See id.*, subd. 6(a)(2).

Relator also argues that she does not have a criminal background and has a good employment history. While this may be true, it does not entitle relator to relief. The relevant inquiry is not whether relator's termination was just or equitable, but simply whether she engaged in employment misconduct under Minn. Stat. § 268.095, subd. 6(a). *See Brown v. Nat'l Am. Univ.*, 686 N.W.2d 329, 332 (Minn. App. 2004) (stating that “[w]e are not concerned with whether or not the employee should have been discharged but only with the employee's eligibility for benefits after termination of employment”), *review denied* (Minn. Nov. 16, 2004).

Affirmed.