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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2069**

Brian Jacob Carpenter,
Relator,

vs.

Best Buy Stores, L.P.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 20, 2012
Affirmed
Bjorkman, Judge**

Department of Employment and Economic Development
File No. 28124680-3

Brian Jacob Carpenter, Minneapolis, Minnesota (pro se relator)

Best Buy Stores, L.P., Arvada, Colorado (respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Halbrooks, Judge; and Worke, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Relator challenges the unemployment-law judge's (ULJ's) determination that he was discharged for employment misconduct and is therefore ineligible for unemployment benefits. Because substantial evidence supports the ULJ's findings and the conduct for which relator was discharged constitutes misconduct, we affirm.

FACTS

Relator Brian Carpenter worked for respondent Best Buy from November 2004 to July 2011 as a "geek squad agent." Geek squad agents work from home on their own computers, from which they remotely access clients' computers to perform repairs. Agents work with several clients at a time. Supervisors monitor agents' computers remotely and make assignments based, in part, on the number of clients with whom the agent is already working.

Between April 25 and June 6, 2011, while on company time, Carpenter accessed the XP computer in his basement from another computer in his home on 24 occasions for periods of one to more than ten hours. On some of these occasions, Carpenter logged into his XP computer using real client names and phone numbers, in violation of Best Buy's strict customer-privacy policy. Carpenter claimed that he did this to retrieve troubleshooting files while working with XP clients. Best Buy believed that Carpenter logged into his XP computer remotely to give the appearance that he was working with more clients than he was, thereby reducing his actual client assignments. On one

occasion, Carpenter used his primary work computer to remotely access and work on his personal laptop on company time.

On July 19, Best Buy discharged Carpenter for falsifying company data, violating the customer-privacy policy, and doing work on his personal computer while on company time. Respondent Minnesota Department of Employment and Economic Development initially determined that Carpenter did not commit employment misconduct and awarded him unemployment benefits. Best Buy appealed. Following a hearing, the ULJ determined that Carpenter was discharged for employment misconduct and is therefore ineligible for unemployment benefits. Carpenter requested reconsideration, and the ULJ affirmed. This certiorari appeal follows.

D E C I S I O N

An employee who is discharged for “employment misconduct” is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). Employment misconduct is “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.” Minn. Stat. § 268.095, subd. 6(a) (2010). A good faith error in judgment, if judgment is required, is not employment misconduct. *Id.*, subd. 6(b)(6) (2010). Whether an employee committed a particular act is a fact question, which we review for substantial evidence, giving deference to the ULJ’s credibility determinations. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But whether an act constitutes employment misconduct is a question of law, which we review de novo. *Id.*

I. Substantial evidence supports the ULJ's factual findings.

Carpenter first argues that the ULJ's finding that he misused client information lacks evidentiary support. We disagree. Carpenter admitted that he used a real client name and phone number on at least one occasion to log into his XP computer. Best Buy manager Paul Dempsey testified that Carpenter used real client names on six occasions and used real client phone numbers on two occasions when he was not actually working with those clients. Dempsey further testified that using client information for any purpose other than to work directly with that client violates Best Buy's strict customer-privacy policy. Substantial evidence therefore supports the ULJ's finding that Carpenter misused client information.

Carpenter next challenges the ULJ's finding that he remotely accessed his XP computer to give the appearance that he was working with a client when he was not. Although Carpenter denies doing so, the record contains circumstantial evidence that supports the ULJ's finding. It is undisputed that agents receive new assignments based in part on how many clients they are already serving. The more clients an agent appears to be working with, the fewer new assignments the agent receives. Best Buy supervisor Stacy Suarez testified that Carpenter logged into his XP computer from his other personal computer 24 times in a 20-day period. Some of these sessions lasted 16 hours. On at least one occasion, Suarez verified that Carpenter was not working with any XP clients. Suarez also testified that files on Carpenter's XP would only be helpful when working with clients with the exact same type of XP. Because clients purchase many different types of computers, it is unlikely that Carpenter was working with clients who have the

same XP computer during each of the 24 sessions. And Carpenter’s argument that the ULJ erred in crediting the testimony of Best Buy representatives over Carpenter’s testimony on this issue is unavailing. Credibility determinations are the “exclusive province of the ULJ and will not be disturbed on appeal.” *Id.* at 345.¹ In sum, substantial evidence supports the ULJ’s finding that Carpenter remotely accessed his XP to create the false impression that he was working with a client and avoid receiving more work.²

II. The conduct for which Carpenter was discharged constitutes employment misconduct.

Carpenter argues that the conduct for which he was discharged reflects an error in judgment but does not rise to the level of misconduct. We disagree. Dishonesty in connection with one’s employment and knowingly violating an employer’s reasonable policies generally constitute employment misconduct. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002) (violation of policies); *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305, 307-08 (Minn. App. 1994) (dishonesty). The ULJ found that Carpenter connected to his XP computer remotely on 24 occasions to give the false impression that he was working with a client and avoid receiving more work and used clients’ names to log onto his XP in violation of Best Buy’s customer-privacy policy. Contrary to Carpenter’s suggestion, a prior warning is not a prerequisite for a finding of employment misconduct. *Auger v. Gillette Co.*, 303 N.W.2d 255, 257 (Minn. 1981). Carpenter’s

¹ The ULJ explicitly stated that the Best Buy representatives’ testimonies were “more credible [than Carpenter’s] because they were detailed, specific, followed a more logical chain of events and were more reasonable under the circumstances.”

² Carpenter does not challenge the ULJ’s other factual findings, most of which are consistent with Carpenter’s own testimony.

conduct involves both dishonesty and violations of reasonable company policies and thus constitutes employment misconduct.

Affirmed.