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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-690**

Lisa Hjelm,  
Relator,

vs.

Dawn Jurkovich,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed March 19, 2012  
Affirmed  
Ross, Judge**

Department of Employment and Economic Development  
File No. 26239166-3

Lisa Hjelm, South St. Paul, Minnesota (pro se relator)

Dawn Jurkovich, Woodbury, Minnesota (respondent employer)

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

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and  
Ross, Judge.

## UNPUBLISHED OPINION

**ROSS**, Judge

Relator Lisa Hjelm challenges an unemployment law judge's decision that she was discharged from her employment at Dawn Jurkovich's Ameriprise Financial Services business because of employment misconduct and that she is therefore ineligible to receive unemployment benefits. Because the record contains substantial support for the unemployment law judge's findings of fact and because the conclusions of law are not erroneous, we affirm.

### FACTS

Lisa Hjelm worked as a full-time client-services manager for Dawn Jurkovich's Ameriprise Financial Services practice from January 2005 until Jurkovich terminated her employment on September 20, 2010. Her job duties primarily consisted of office management work, including completing paperwork and filing.

In early 2010, Jurkovich began noticing that the quality of Hjelm's job performance was substandard. Hjelm frequently made mistakes when processing client paperwork, writing and sending email messages, and scheduling meetings for Jurkovich. She also arrived late and Jurkovich believed that she behaved disrespectfully toward her coworkers and the firm's clients. In March 2010, Jurkovich warned Hjelm that she could lose her job if she failed to improve her performance and attendance.

Jurkovich continued to be unsatisfied with Hjelm's performance. On September 10, 2010, Hjelm arrived to work 30 minutes late. Later that day, Jurkovich saw Hjelm conducting personal business at her desk, including organizing her personal finances,

shopping online, and sending personal email messages related to a business that Hjelm operated. Jurkovich gave Hjelm a final warning, telling her that if she continued to conduct her personal affairs at work, her employment would be terminated. On September 17, her day off, Hjelm came into the office to work but stayed later to conduct personal business on her work computer, which Jurkovich had told her not to do. Jurkovich terminated Hjelm's employment shortly afterward. Hjelm was initially deemed eligible for unemployment benefits because she informed the Department of Employment and Economic Development (DEED) that she was not terminated for employment misconduct. Jurkovich appealed the initial determination, and after a de novo hearing, an unemployment law judge (ULJ) found that Hjelm's employment was terminated for conducting personal business at work after repeated warnings, which constitutes employment misconduct and makes her ineligible for unemployment benefits. Hjelm appeals by writ of certiorari.

## **D E C I S I O N**

Hjelm challenges the ULJ's decision that she was discharged for employment misconduct, disqualifying her from receiving unemployment benefits. We may remand, reverse, or modify a ULJ's benefits decision if the relator's substantial rights were prejudiced by fact findings that are unsupported by substantial evidence or by a decision that is affected by an error of law, made upon unlawful procedure, or is arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d)(3)–(6) (2010).

We begin with the general proposition that an employee who is fired because of employment misconduct is not entitled to unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). Employment misconduct is “any intentional, negligent, or indifferent

conduct, on the job . . . that displays clearly” either “a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee” or “a substantial lack of concern for the employment.” *Id.*, subd. 6(a) (2010). In concluding that Hjelm committed employment misconduct, the ULJ found that she conducted personal business at work after being warned against it. We review de novo a ULJ’s legal determination of whether an act committed by an employee constitutes employment misconduct. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). In doing so, we defer to the ULJ’s findings if they are substantially supported by the record. *Id.*

Hjelm first challenges the ULJ’s decision on the ground that Jurkovich never informed her that she could not conduct personal business on her office computer during breaks or on her days off. But the ULJ credited Jurkovich’s testimony and found that Jurkovich told Hjelm that she was not to conduct personal business in the office regardless of whether she was scheduled to work. Because we defer to the ULJ’s credibility determinations, *id.*, we must reject Hjelm’s argument.

Hjelm also argues that the ULJ should have disregarded some of the documentary evidence because Jurkovich produced it less than five days before the hearing. The argument is not convincing for legal and factual reasons. Hjelm does not allege that she was prejudiced by the untimely production or specify any rule providing that untimely-submitted documents must be suppressed. And the ULJ continued the hearing soon after receiving the challenged documents into evidence, giving Hjelm what the ULJ described—with apparent

accuracy—as more than enough time to consider the documents and prepare to address them. Hjelm’s unfairness argument therefore does not lead us to reverse.

The ULJ’s finding that Hjelm was sending personal email messages and shopping online from her work computer after being finally warned against that conduct has ample support in the record. We hold that this conduct in the face of the warning supports the ULJ’s determination that Hjelm engaged in a serious violation of the standards of behavior that her employer rightfully and reasonably expected her to meet and demonstrated a substantial lack of concern for her employment. We therefore affirm the ULJ’s decision that Hjelm is disqualified from receiving unemployment benefits.

**Affirmed.**