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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0411**

Melissa Mensing,
Relator,

vs.

County of Steele,
Respondent,

Department of Employment and Economic Development,
Respondent.

Filed November 13, 2012

Affirmed

Harten, Judge*

Department of Employment and Economic Development
File No. 28629903-4

Melissa K. Mensing, Owatonna, Minnesota (pro se relator)

Daniel A. McIntosh, Steele County Attorney, Owatonna, Minnesota (for respondent
County of Steele)

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

Considered and decided by Stauber, Presiding Judge; Rodenberg, Judge; and
Harten, Judge.

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

UNPUBLISHED OPINION

HARTEN, Judge

Relator challenges the determination of the unemployment law judge (ULJ) that relator was discharged for aggravated unemployment misconduct. Because relator's false applications for public assistance had a significant adverse effect on her employment, we affirm.

FACTS

Beginning in 2006, relator Melissa Mensing began making false statements on the claims for medical assistance that she filed with her employer, respondent Steele County. Relator failed to disclose income she received from self-employment and to provide a complete list of her vehicles.

In 2008, relator became a financial assistant for Steele County. Her job duties then included reviewing the semi-annual claims filed by recipients of public assistance, such as herself. In 2010, she received a gross income of \$133,000 from self-employment. She failed to mention this on her claim, and she listed only two of the seven vehicles registered to herself and her husband.

In 2011, after police had executed a search warrant for relator's home, she was charged with felonies related to the medical assistance fraud. During the investigation, Steele County put relator on paid administrative leave and then discharged her.

Relator applied for benefits with respondent Minnesota Department of Employment and Economic Development (DEED), which determined she was eligible. Steele County appealed, and, after a telephone hearing, an unemployment law judge

(ULJ) determined that relator was not eligible for benefits because she had been discharged for aggravated employment misconduct and that she had been overpaid \$3,500.

In response to relator's request for reconsideration, the ULJ affirmed the prior decision. Relator appealed and, on 5 March 2012, this court granted a writ of certiorari. Three months later, in June 2012, relator agreed to a stipulated-facts trial on the felony charges. She was adjudicated guilty of perjury for making false statements on medical-assistance claims from February 2006 through May 2011.

Relator challenges the decision that she was discharged for aggravated misconduct.

D E C I S I O N

Whether an employee committed aggravated employee misconduct is a mixed question of fact and law: “[w]hether the employee committed a particular act is a question of fact,” but whether that act constituted aggravated employment misconduct is a question of law. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. 1 Oct. 2008).

“‘[A]ggravated employment misconduct’ means . . . the commission of any act, on the job or off the job, that would amount to a gross misdemeanor or felony if the act . . . had a significant adverse effect on the employment” Minn. Stat. § 268.095, subd. 6a(a)(1) (2010). By omitting disclosure of her self-employment income and of some of her vehicles on a form on which she declared, under penalty of perjury, that all the information was correct, relator committed an act, off the job, that would amount to a

felony. *See* Minn. Stat. § 256.984 (2010) (any person who applies for public assistance and falsely makes the declaration on the form is guilty of perjury); Minn. Stat. § 609.48, subd. 4(2) (2010) (conviction of perjury yields a sentence of imprisonment for not more than five years or payment of a fine of not more than \$10,000 or both).

Relator's act had a significant adverse effect on her employment because perjury on an application for public assistance committed by a county employee whose job included reviewing applications for fraudulent statements obviously "affects the credibility of and reduces public confidence in the integrity of [the employer.]" *Pechacek v. Minn. State Lottery*, 497 N.W.2d 243, 246 (Minn. 1993) (holding that conviction of a lottery employee for off-site conduct unrelated to his employment was a discharge for gross [now termed aggravated] misconduct "which interfered with and substantially affected his employment"); *see also Ballin v. Metro. Transit Comm'n*, 525 N.W.2d 11, 13-14 (Minn. App. 1994) (*Pechacek* not confined to lottery employees whose director has statutory duty to maintain public confidence in employees; bus driver's conviction for sale of marijuana while off-duty was "gross misconduct that interfered with and adversely affected his employment so as to disqualify him from receiving benefits"); *Schmidt v. City of Duluth*, 346 N.W.2d 671, 673-74 (Minn. App. 1984) (animal-shelter employee who was discharged for off-duty conduct in becoming intoxicated and driving past a house while firing a shotgun to frighten the occupants was gross misconduct that interfered with and adversely affected his employment because "he [could] no longer effectively perform the services for which he was employed" of ensuring compliances with and enforcement of laws and ordinances after violating the law himself).

The ULJ correctly concluded that relator was fired for aggravated employment misconduct as defined in Minn. Stat. § 268.095, subd. 6a(a)(1), and is not entitled to benefits.¹

Affirmed.

¹ Minn. Stat. § 268.095, subd. 6a(b), provides that, “[i]f an applicant is convicted of a gross misdemeanor or felony for the same act for which the applicant was discharged, it is aggravated employment misconduct if the act . . . had a significant adverse effect on the employment.” Because relator had not yet been convicted when she was discharged, the ULJ correctly concluded that subdivision 6a(b) does not apply, and we do not address its application.