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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0981**

Fredrick Bennett James,
Relator,

vs.

Northern Star Co.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed February 19, 2013
Affirmed
Ross, Judge**

Department of Employment and Economic Development
File No. 29248013-4

Fredrick Bennett James, Minneapolis, Minnesota (pro se relator)

Northern Star Co., St. Louis, Missouri (respondent employer)

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

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

UNPUBLISHED OPINION

ROSS, Judge

Fredrick James challenges an unemployment law judge's decision that Northern Star Company discharged him for employment misconduct, leaving him ineligible for unemployment benefits. Because the record supports the finding that James was absent and tardy for work without properly notifying his employer, and because his conduct constitutes employment misconduct, we affirm.

FACTS

Fredrick James worked as a cleaner for Northern Star from September 7, 2010, until Northern Star terminated his employment on January 13, 2012, due to repeated violations of its attendance policy. Northern Star requires its employees to call in to work before their shift if they will be tardy or absent. James first violated the attendance policy on November 7, 2011, when he called into work 36 minutes after the start of his shift to report that he would be absent due to illness. James then called in 34 minutes after his shift began on November 18, 2011, to report that he would be absent due to illness. Northern Star warned James in writing on November 22, 2011, that further violations of the attendance policy may result in disciplinary action or discharge.

James violated the attendance policy again on December 29, 2011. He called in to report that he was ill 73 minutes after the start of his shift, and he did not arrive to work for another 49 minutes. And on January 10, 2012, James called Northern Star 59 minutes after his shift started to report that he was sick and not coming in. Northern Star terminated James's employment.

After the termination, James applied to the Minnesota Department of Employment and Economic Development for unemployment benefits. The department declined his request for benefits because he was discharged for employment misconduct. James appealed and an unemployment law judge found that Northern Star had discharged James for employment misconduct, making James ineligible for unemployment benefits. James filed a request for reconsideration and the unemployment law judge affirmed the ruling. This certiorari appeal follows.

D E C I S I O N

James challenges the unemployment law judge's determination that Northern Star discharged him for employment misconduct based on his violations of the attendance policy. We review an unemployment law judge's decision to determine whether a party's substantial rights were prejudiced because the findings, inferences, conclusion, or decision are unsupported by substantial evidence or affected by an error of law. Minn. Stat. § 268.105, subd. 7(d)(4)–(5) (2010). Substantial evidence is relevant evidence that a reasonable person might accept as supporting the conclusion. *Moore Assocs., LLC v. Comm'r of Econ. Sec.*, 545 N.W.2d 389, 392 (Minn. App. 1996). Employees are ineligible for unemployment benefits when they are discharged for employment misconduct. Minn. Stat. § 268.095, subd. 4(1) (2010). Employment misconduct is intentional, negligent, or indifferent conduct that displays 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). We review factual findings in the light most favorable to the decision and defer to the

unemployment law judge's determinations on credibility. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But whether the employee's particular actions constitute employee misconduct is a question of law, which we review de novo. *Id.*

James does not dispute his absences or that he violated Northern Star's attendance policy on four occasions by calling in after the start of his shift, and substantial evidence supports these facts. Instead James claims that his absences and tardiness were due to illness and that he has a right not to be terminated for being ill. Employee misconduct does not include absence due to illness or injury of the applicant if he gives proper notice to the employer. Minn. Stat. § 268.095, subd. 6(b)(7). James was not discharged for his alleged illnesses; he was discharged for failing to give proper notice of absence.

Employers have the right to enforce reasonable work rules regarding attendance and absenteeism. *Jones v. Rosemount, Inc.* 361 N.W.2d 118, 120 (Minn. App. 1985). And repeated failures to properly notify an employer of absences and tardiness is evidence of a "willful or wanton disregard" for the employer or a "lack of a concern by the employee for his job." *Gustafson v. IRC Indus.*, 374 N.W.2d 594, 597 (Minn. App. 1985) (quotation omitted). We have previously held an absentee policy to be reasonable when it required an employee to call in absences and tardiness two hours before his shift. *See Edwards v. Yellow Freight Sys.*, 342 N.W.2d 357, 359 (Minn. App. 1984). Northern Star's policy allowing James to call at *any* time prior to the beginning of his shift is reasonable and Northern Star has the right to require compliance.

James knew that the policy required him to call in before his shifts. Had he done so, he would not have been discharged. And he had been warned that another violation

could lead to his discharge. The record substantially supports the ULJ's determination that James's employment was terminated for employee misconduct and that he is ineligible for unemployment benefits.

James also appears to argue that his case is somehow tainted, but he does not support this argument with law or evidence. And he appears to assert a constitutional violation, but the assertion is not sufficiently briefed to warrant any discussion.

Affirmed.