

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1641**

Judy M. Patterson,  
Relator,

vs.

Elderwood of Hinckley,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed September 16, 2008  
Affirmed  
Peterson, Judge**

Department of Employment and Economic Development  
File No. 6298 07

Judy M. Patterson, 10912 Dahl Road, Hinckley, MN 55037 (pro se relator)

Stephen W. Cooper, Cooper Law Firm, Loring Green East, 1201 Yale Place, Suite A100,  
Minneapolis, MN 55403 (for respondent Elderwood of Hinckley)

Lee B. Nelson, Katrina I. Gulstad, Department of Employment and Economic  
Development, First National Bank Building, Suite E200, 332 Minnesota Street, St. Paul,  
MN 55101-01351 (for respondent Department of Employment and Economic  
Development)

Considered and decided by Kalitowski, Presiding Judge; Peterson, Judge; and  
Muehlberg, Judge.\*

---

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

## UNPUBLISHED OPINION

**PETERSON**, Judge

In this certiorari appeal, relator challenges the decision of an unemployment-law judge (ULJ) that relator is disqualified from receiving unemployment benefits because she was discharged for misconduct for lying to her employer during an investigation of relator's use of an emergency call button. We affirm.

### FACTS

Respondent Elderwood of Hinckley, an assisted-living facility, employed relator as a part-time personal-care attendant. Relator used an emergency call button to locate another employee on duty when a resident skinned her knee. Relator understood that the call button was only to be used for emergencies, but she and another staff person did not know where to find the supplies needed to give the resident first-aid. Relator initially denied to her supervisor that she had used the call button but admitted doing so after being told that she had been seen using it on a surveillance video.

The next week, the employer offered relator a different position with more housekeeping and cooking duties. Relator became very angry when her supervisor talked to her about the new position. A few days later, the employer discharged relator. The employer cited several reasons for the discharge, including that relator used a call button for a non-emergency purpose and lied about doing so.

Relator established a benefit account seeking unemployment benefits from respondent Department of Employment and Economic Development. A department adjudicator determined that relator was discharged for reasons other than misconduct and,

therefore, was not disqualified from receiving unemployment benefits. The employer appealed to a ULJ. Following an evidentiary hearing, the ULJ determined that relator was discharged for misconduct and reversed the determination of nondisqualification. Among other acts, the ULJ found that relator “used an emergency call button for a non-emergency purpose” and “lied about doing so.” The ULJ affirmed the misconduct determination on reconsideration. This certiorari appeal followed.

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

This court may affirm the ULJ’s decision, remand it for further proceedings, or reverse or modify it if the relator’s substantial rights “may have been prejudiced because the findings, inferences, conclusion, or decision are . . . affected by . . . error of law,” “unsupported by substantial evidence in view of the entire record as submitted,” or “arbitrary or capricious.” Minn. Stat. § 268.105, subd. 7(d) (2006).

Whether an employee committed misconduct is a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether the employee committed a particular act is a fact question. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We review the ULJ’s findings of fact in the light most favorable to the decision and will affirm them if they are supported by substantial evidence. *Id.* But whether an employee’s act constitutes employment misconduct is a question of law, which we review de novo. *Schmidgall*, 644 N.W.2d at 804.

An employee who was discharged for misconduct is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2006). “Employment misconduct” is defined as

any intentional, negligent, or indifferent conduct, on the job or off the job (1) that displays clearly a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee, or (2) that displays clearly a substantial lack of concern for the employment.

Inefficiency, inadvertence, simple unsatisfactory conduct, a single incident that does not have a significant adverse impact on the employer, conduct an average reasonable employee would have engaged in under the circumstances, poor performance because of inability or incapacity, good faith errors in judgment if judgment was required, or absence because of illness or injury with proper notice to the employer, are not employment misconduct.

Minn. Stat. § 268.095, subd. 6(a) (2006).

Relator argues that the ULJ erred in finding that she lied about using the emergency call button. Relator claims that she only denied repeatedly using the call button and that once her supervisor clarified that he was talking about a single incident, she admitted using the call button. But the supervisor testified:

Q Now when you first confronted [relator] with the fact that she had used [the emergency call button] for a non-emergency situation, did she admit that she had?

A Not at first, no. She said she never used it . . .

. . . .

Q . . . [D]id you then indicate to her the pictures had been taken from the surveillance?

A Yes.

Q And did that show that it had a picture of her using that, as you'd been told by others that she had done?

A Correct.

Q And did she then at first still continue to deny it even though you had pictures proving it?

A She didn't think it was her in the pictures and then admitted it was her in the pictures.

Q Okay. So first she lied to you about whether she had used it at all, when in fact she had.

A Correct.

Q Then you showed her pictures and she lied about whether the pictures were of her and then finally she admitted that her previous statements had been false.

A Correct.

The ULJ specifically found that the supervisor's testimony was more credible than relator's testimony. This court defers to the ULJ's credibility determinations and resolutions of conflicts in testimony. *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007) (conflicts in testimony); *Skarhus*, 721 N.W.2d at 344 (credibility determinations). The supervisor's testimony is substantial evidence supporting the ULJ's finding that relator lied about using the emergency call button. *See Minn. Ctr. for Env'tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 464 (Minn. 2002) (defining substantial evidence).

Even if, as relator contends, her use of the emergency call button was appropriate, that does not excuse her failure to be truthful during the employer's investigation of the incident. In *Cherveney v. 10,000 Auto Parts*, this court concluded that even though the employer overreached in its investigation of a possible theft, the employee, having undertaken to answer questions, had a duty to be truthful and committed misconduct by lying during the employer's investigation. 353 N.W.2d 685, 688 (Minn. App. 1984). This court noted that "it was in the employer's interest to investigate what it believed to be a theft of goods, and [the employee]'s dishonesty was material to the employer's investigation." *Id.*

Here, the employer had an interest in ensuring appropriate use of the emergency call button because inappropriate use could reduce its effectiveness. Accordingly, the

employer had an interest in investigating what it believed to be inappropriate use of the call button, and relator's dishonesty was material to the investigation. Under *Cheverny*, relator's conduct during the employer's investigation of what it believed to be inappropriate use of the emergency call button constituted employment misconduct, so the ULJ properly determined that relator is disqualified from receiving unemployment benefits. *Id.*; see also *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305, 307-08 (Minn. App. 1994) ("Dishonesty that is connected with employment may constitute misconduct.").

Because we have determined that relator's conduct during the investigation constituted misconduct, we need not address the other acts found by the ULJ.

**Affirmed.**