

*This opinion will be unpublished and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
A07-1750**

Autumn H. May,
Relator,

vs.

Coldwater Creek Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed September 2, 2008
Affirmed
Stoneburner, Judge**

Department of Employment and Economic Development
File No. 7249 07

Autumn H. May, 1139 Landmark Trail South, Hopkins, MN 55343 (pro se relator)

Coldwater Creek Inc., 1 Coldwater Creek Drive, Sandpoint, ID 83864-9020 (respondent)

Katrina I. Gulstad, Department of Employment and Economic Development, First
National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101-1351
(for respondent Department of Employment and Economic Development)

Considered and decided by Hudson, Presiding Judge; Stoneburner, Judge; and
Muehlberg, Judge.*

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

UNPUBLISHED OPINION

STONEBURNER, Judge

Relator challenges the decision of an unemployment law judge (ULJ) disqualifying her from receiving unemployment benefits because she was discharged for misconduct. We affirm.

DECISION

Relator Autumn H. May was a store manager employed by respondent Coldwater Creek Inc. from November 26, 2005, until her employment was terminated on March 21, 2007, for falsifying time records.¹ May admits that she altered the time records of an employee to disguise the fact that the employee had violated Coldwater Creek's strict policy prohibiting overtime. And, a few days later, a subordinate, following May's example, altered the time records of another employee for the same reason and notified May that she had done so. May submitted the altered time records of the two employees to avoid detection of the violations of Coldwater Creek's policy.

A ULJ determined that altering the time records constituted employment misconduct that disqualified relator from receiving unemployment benefits. May argues that the ULJ's determination is not supported by substantial evidence in view of the entire record as submitted and that, due to prejudice, the decision was arbitrary and capricious, requiring reversal under Minn. Stat. § 268.105, subd. 7(d)(2006) (providing, in relevant

¹ Coldwater Creek's termination-notice letter stated that May falsified the records of seven employees. May admitted changing the timecards of five employees to reflect that they attended a quarterly meeting that they did not attend, but the ULJ's decision focused only on alteration of the time records of two employees to conceal that each had violated Coldwater Creek's prohibition on working overtime.

part, that this court may reverse or remand a case if the substantial rights of the relator may have been prejudiced because the findings, inferences, conclusions, or decisions are unsupported by substantial evidence in view of the record as a whole, or arbitrary or capricious).

Whether an employee committed employment misconduct is a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

Whether an employee engaged in an act that constitutes employment misconduct is a factual question, but whether a particular act meets the statutory definition of employment misconduct is a question of law reviewed de novo. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). This court reviews factual findings in the light most favorable to the decision and “will not disturb them as long as there is evidence that reasonably tends to sustain those findings.” *Schmidgall*, 644 N.W.2d at 804.

“Employment misconduct” is defined as:

[A]ny 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.

Minn. Stat. § 268.095, subd. 6(a) (2006). “Dishonesty that is connected with employment may constitute misconduct.” *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305, 307-08 (Minn. App. 1994) (holding that an employee who falsely claimed to have trained store managers committed employment misconduct). An employee who intentionally falsifies reports commits disqualifying employment misconduct. *See Whorton v. Dep’t of*

Health & Human Servs., 368 N.W.2d 750, 752 (Minn. App. 1985) (finding that falsifying inspection reports constituted misconduct and that “[r]elator owed a duty to honestly and properly conduct inspections”).

Although May asserts that she did not know that altering time records was a basis for terminating her employment, the record demonstrates that she received a copy of her employer’s policy handbook which states: “Falsifying personal time records or recording time on another employee’s time record may result in disciplinary action, up to and including termination of employment.” And May acknowledged that it was her responsibility to enforce her employer’s policies. Therefore, May’s claim that she did not know that falsifying time records could lead to her discharge is not supported by the record.

May also asserts that she was trained that making “adjustments” to time records was an acceptable practice. May’s assertions relate specifically to her conduct of changing the records of five employees who did not attend a scheduled Sunday quarterly meeting to reflect that the employees had worked on Sunday rather than on Monday, when they actually worked. Doing so ensured that Coldwater Creek would allocate May sufficient paid hours for the next quarterly meeting because hours allocated were based on attendance at past meetings. The ULJ did not find May’s testimony about training credible. In denying May’s request for reconsideration, the ULJ noted that no evidence in the record corroborated May’s assertion that she was trained that altering timecards was an acceptable practice. We defer to the ULJ’s credibility determinations. *Nichols v. Reliant Eng’g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006).

The ULJ also rejected May's claim that her actions were done in Coldwater Creek's best interests. The record shows that May acted to prevent the employer from detecting a violation of its policies, and it does not show that the deception benefited, or was intended to benefit, Coldwater Creek. May's acts do not constitute a good-faith error in judgment: Coldwater Creek's written policy is clear, and the policy expressly forbids the falsification of time records. No exercise of judgment was required by this policy.

Additionally, May argues that because the subordinate who altered one of the time records was not discharged, her termination is evidence of discrimination under the American's with Disabilities Act and the Fourteenth Amendment. But May has cited no authority for the proposition that an employer's failure to discipline another employee for similar conduct prevents a finding that she committed misconduct disqualifying her from receiving unemployment benefits. May's assertion that her discharge constituted discrimination is irrelevant to the determination of whether her act constituted employment misconduct. Additionally, there is no evidence in the record that May was discharged due to a disability. We conclude that the ULJ's decision is supported by substantial evidence in view of the entire record as submitted.

We also conclude that the ULJ's decision was not arbitrary and capricious. May asserts that the ULJ's reference to her failure to present new evidence in her request for reconsideration shows that the decision was arbitrary and capricious. But May misunderstands the reconsideration process. On a request for reconsideration, the ULJ must order an additional evidentiary hearing if a party shows that newly discovered evidence would change the outcome of the case or show that the original evidence was

false. Minn. Stat. § 268.105, subd. 2 (2006). The ULJ's denial of reconsideration correctly reflects that May did not submit such evidence and does not make the decision arbitrary or capricious.

May further asserts that the ULJ's use of "falsify," rather than "alter" or "adjust," to describe changes to the time records, and the ULJ's failure to sua sponte recuse herself when May requested reconsideration reflect the ULJ's prejudice and demonstrate that the decision is arbitrary or capricious. This argument is without merit. At the hearing, May's representative objected to the ULJ's use of "falsify," the ULJ initially discontinued using that term, but later in the hearing used it again without objection. And because the information May submitted to her employer on the time cards was false, use of that term by the ULJ was not a reflection of prejudice against May.

May asserts that she invoked Minn. R. Civ. P. 63.03 by alleging prejudice in her memorandum supporting her motion for reconsideration. *See* Minn. R. Civ. P. 63.03 (establishing procedure for filing a motion to remove a judge). But the Department of Employment and Economic Development's rules are not required to conform to the rules of court. *See* Minn. Stat. § 268.105, subd. 1(b) (2006) (stating that DEED "shall adopt rules on evidentiary hearings" that "need not conform to . . . technical rules of procedure"). Under the applicable DEED rules, a party may move for removal of a ULJ by written application with a statement of the basis for removal. Minn. R. 3310.2915 (2007). On such a motion, the director of the appeals office must decide the fitness of the ULJ to hear the particular case. *Id.* Additionally, a ULJ must recuse from a case only when the ULJ "believes that presiding over the case would create the appearance of

impropriety.” *Id.* Further, “a request for reconsideration shall be decided by the unemployment law judge who issued the finding of fact and decision” unless disqualified, removed, no longer employed by DEED, or on an extended leave. Minn. Stat. § 268.105, subd. 2(e) (2006). We find no merit in May’s claim that the ULJ was required to remove herself in this case or that the ULJ’s failure to do so rendered her decision arbitrary or capricious.

Affirmed.