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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0215**

Tracie Fegley,
Relator,

vs.

Trailblazer Joint Powers Board,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed September 5, 2017
Affirmed
Hooten, Judge**

Department of Employment and Economic Development
File No. 34985101-3

Tracie Fegley, Stewart, Minnesota (pro se relator)

Trailblazer Joint Powers Board, Glencoe, Minnesota (respondent employer)

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

Considered and decided by Hooten, Presiding Judge; Bjorkman, Judge; and
Bratvold, Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Relator challenges the decision of an unemployment law judge on reconsideration that she is ineligible for unemployment benefits because she was discharged for employment misconduct. Relator asserts that her conduct was caused by her mental illness of anxiety and thus was not misconduct. We affirm.

FACTS

On August 4, 2016, relator Tracie Fegley, a transit dispatcher for respondent Trailblazer Joint Powers Board (Trailblazer), left her job approximately five minutes into her scheduled shift. Fegley's employment with Trailblazer was formally terminated on August 15, 2016.

In October 2016, respondent Minnesota Department of Employment and Economic Development (DEED) determined that Fegley was eligible to receive unemployment insurance benefits. Trailblazer appealed, and an unemployment law judge (ULJ) held a hearing in November 2016. The ULJ's decision concluded that Fegley was eligible for unemployment benefits because she was not terminated for employment misconduct. Trailblazer filed a request for reconsideration and the ULJ issued a modified decision in January 2017, concluding that Fegley was terminated for employment misconduct. Fegley appeals.

DECISION

Fegley argues that the conduct which led to her termination does not constitute employment misconduct because it was due to a medical issue, and therefore she is entitled to unemployment compensation. We disagree.

“An applicant who was discharged from employment by an employer is ineligible for all unemployment benefits . . . only if . . . the applicant was discharged because of employment misconduct.” Minn. Stat. § 268.095, subd. 4 (2016). Employment misconduct is defined as “any intentional, negligent, or indifferent conduct . . . that displays clearly: (1) a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee; or (2) a substantial lack of concern for the employment.” *Id.*, subd. 6(a) (2016). The definition of employment misconduct specifically excludes conduct that is a direct result of an employee’s “mental illness or impairment.” *Id.*, subd. 6(b)(1) (2016).

“Whether an employee committed employment misconduct is a mixed question of fact and law. Whether the employee committed a particular act is a question of fact.” *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008) (citation omitted), *review denied* (Minn. Oct. 1, 2008). “In unemployment benefits cases, [appellate courts] review the ULJ’s findings of fact in the light most favorable to the decision and will not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them.” *Wilson v. Mortg. Res. Ctr.*, 888 N.W.2d 452, 460 (Minn. 2016) (quotations omitted). “But whether the act committed by the employee constitutes employment misconduct is a question of law, which we review de novo.” *Peterson*, 753 N.W.2d at 774.

In his modified decision, the ULJ made extensive findings of fact regarding Fegley's conduct on the day in question, all of which are supported by testimony in the record. The ULJ found that it was stormy on the morning of August 4, and the dispatchers were short-staffed and busier than usual dealing with a bus accident, rerouting, and other tasks. Fegley began her shift by making calls and decisions that were duplicative of previous actions by her coworkers. When one of her coworkers criticized her for these actions, Fegley "immediately threw her hands into the air and said, 'I can't do this anymore.'" Fegley left work approximately five minutes into her shift, leaving her coworkers "short-handed during a critical time."

Specific to Fegley's mental condition, the ULJ found that Fegley takes medication for anxiety, but that "she felt fine" on the morning of August 4 when beginning work. After leaving the building but while still in the parking lot, Fegley called her supervisor to request a meeting to discuss what had happened. This meeting between Fegley and her supervisors took place the next day, and Fegley did not mention anxiety as the reason for leaving work the previous day, but instead criticized Trailblazer management for not providing enough support to the dispatchers.

On August 8, 2016, Trailblazer sent Fegley a notice of its intent to terminate her employment and provided a meeting time to allow Fegley to "present information regarding why [her] employment should not be terminated." During this meeting, Fegley again did not mention anxiety as the reason for her leaving work early on August 4.

We agree with the ULJ's conclusion that Fegley's actions on August 4 were employment misconduct. In sum, substantial evidence supports the ULJ's finding that

Fegley was not discharged because of a medical condition. Fegley walked off the job in the midst of a crisis, saying “I can’t do this anymore.” This conduct was intentional, was “a serious violation of the standards of behavior” Trailblazer should reasonably expect of its employees, and clearly demonstrated “a substantial lack of concern for [her] employment” by Fegley. Further, Fegley met with management twice after the incident but before her termination, and did not claim her actions were due to a medical condition until after she was terminated.

Affirmed.