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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1056**

Jeffrey Studley,
Relator,

vs.

Cargill Meat Solutions Corporation,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 12, 2011
Affirmed
Peterson, Judge**

Department of Employment and Economic Development
File No. 24657745-3

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Considered and decided by Peterson, Presiding Judge; Toussaint, Judge; and
Hudson, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that he is ineligible to receive unemployment benefits because he was discharged for employment misconduct. We affirm.

FACTS

Relator Jeffrey Studley worked as a quality-assurance assistant for respondent Cargill Meat Solutions, Corp. (respondent), on its meat-packaging lines. Before packaging meat products, respondent passed the products through metal-detector machines located on each production line. To ensure that the machines were working properly, respondent required that the machines be tested at least once during each work shift. Testing involved running wands with metal pieces through each machine to determine whether it was capable of detecting metal in the product. The time and the result of each test were then recorded in a log for that machine. As a quality-assurance assistant, relator was required to perform this test himself or observe a production worker perform the test. If relator did not perform the test himself, he was required to make a notation in the log indicating that he observed the test and that it was performed correctly.

On February 1, 2010, relator was responsible for verifying the functionality of the metal-detector machine on the lunchmeat line. Relator was approximately 30 feet away from the metal-detector machine when he heard the machine being tested by a production worker on the line. Even though relator was not in a position where he could see whether the test was performed correctly, he made a notation in the log indicating that he had

observed the test and that it was performed correctly. The production worker later reported to respondent that relator was not present when she performed the test.

Respondent suspended relator pending further investigation of his conduct and later terminated relator's employment. Relator filed a claim for unemployment benefits with respondent Minnesota Department of Employment and Economic Development. A department adjudicator determined that relator was discharged for employment misconduct and was ineligible for unemployment benefits. Relator appealed to a ULJ. Following an evidentiary hearing, by findings of fact and decision, the ULJ determined that relator was discharged for employment misconduct and, therefore, was ineligible to receive unemployment benefits. Relator filed a request for reconsideration, and the ULJ issued an order affirming the initial decision. This certiorari appeal followed.

D E C I S I O N

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 the employee committed a particular act is a question of fact.” *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We view the ULJ's findings of fact in the light most favorable to the decision and defer to the ULJ's credibility determinations, and we will not disturb factual findings if they are supported by substantial evidence. *Id.* But whether an employee's act constitutes employment misconduct is a question of law, which this court reviews de novo. *Schmidgall*, 644 N.W.2d at 804.

An employee who is discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008). “Employment misconduct means any intentional, negligent, or indifferent conduct, on the job or off the job 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) (Supp. 2009). Employment misconduct does not include inefficiency or inadvertence, simple unsatisfactory conduct, poor performance because of inability or incapacity, or good-faith errors in judgment. *Id.*, subd. 6(b)(2)-(3), (5)-(6). This definition of employment misconduct “is exclusive and no other definition applies.” *Id.*, subd. 6(e) (2010).

As a general rule, an employee’s “knowing violation of an employer’s policies, rules, or reasonable requests constitutes misconduct.” *Montgomery v. F&M Marquette Nat’l Bank*, 384 N.W.2d 602, 604 (Minn. App. 1986), *review denied* (Minn. June 13, 1986). “Dishonesty that is connected with employment may constitute misconduct.” *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305, 307-08 (Minn. App. 1994) (explaining that employee who falsely claimed to have trained store managers committed employment misconduct); *see also Frank v. Heartland Auto. Servs., Inc.*, 743 N.W.2d 626, 630-31 (Minn. App. 2008) (holding that even a single act of dishonest conduct can constitute employment misconduct because employer has the right to rely on integrity of employees). “Even a single incident can be misconduct if it represents a sufficient enough disregard for the employer’s expectations.” *Blau v. Masters Rest. Assocs.*, 345 N.W.2d 791, 794 (Minn. App. 1984).

The ULJ explained the misconduct determination as follows:

The preponderance of the evidence shows that [relator] did not observe the metal detector test but noted in the log that he did. [Relator's] testimony, that he could observe the test while passing 30 feet away from the metal detector, is not credible. [Respondent] has the right to expect honesty in the workplace. The metal detector is an important part of [respondent's] efforts to make sure the product is safe for consumers. [Relator's] actions display a substantial lack of concern for the employment.

Relator argues that his conduct does not rise to the level of misconduct because it was a single incident. But the statute that previously included the single-incident exception from the definition of employment misconduct was amended in 2009 to provide that “[i]f the conduct for which the applicant was discharged involved only a single incident, that is an important fact that must be considered in deciding whether the conduct rises to the level of employment misconduct.” 2009 Minn. Laws ch. 15, § 9, at 48 (codified at Minn. Stat. § 268.095, subd. 6(d) (Supp. 2009); *see also* 2009 Minn. Laws ch. 15, § 9, at 48 (amending statute for determinations issued on or after August 2, 2009). Thus, the fact that relator's conduct was a single incident is not determinative.

Furthermore, relator worked as a quality-assurance assistant on a meat-packaging line, and, as the ULJ noted, “[t]he metal detector is an important part of [respondent's] efforts to make sure the product is safe for consumers.” In the context of assuring food safety, even a single failure to follow safety procedures could have serious negative consequences, and excusing a single incident could undermine the integrity of food-safety procedures. Consequently, the fact that relator's conduct was a single incident does not mean that it does not rise to the level of misconduct.

On reconsideration, the ULJ noted that “[relator] did not observe the test and he knew he did not observe the test when he logged that he had observed the test.” Relator does not dispute that he was required to observe the production worker perform the metal-detector-machine test or that he was 30 feet away from the machine when the test was performed. Instead, relator argues that he “observed the test being performed from about 30 feet away.” But the ULJ specifically found that “[relator’s] testimony, that he could observe the test while passing 30 feet away from the metal detector, is not credible,” and we defer to the ULJ’s credibility determinations. *Skarhus*, 721 N.W.2d at 344.

Relator’s failure to observe the metal-detector test, and his dishonesty about that failure, showed “a substantial lack of concern for [his] employment.” Minn. Stat. § 268.095, subd. 6(a)(2). We, therefore, affirm the ULJ’s decision that relator is ineligible for unemployment benefits because he was discharged for employment misconduct.

Affirmed.