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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-1326**

Ross Rittgers,  
Relator,

vs.

Automotive Parts Solutions, Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed May 23, 2011  
Affirmed  
Wright, Judge**

Minnesota Department of Employment and Economic Development  
File No. 24669284-3

Ross Rittgers, Melrose, Minnesota (pro se relator)

Automotive Parts Solutions, Inc., Rockville, Minnesota (respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Stoneburner, Judge; and  
Wright, Judge.

## UNPUBLISHED OPINION

**WRIGHT**, Judge

In this certiorari appeal from the denial of unemployment benefits, relator argues that the unemployment law judge (ULJ) erred by concluding that relator was discharged for employment misconduct and, therefore, is ineligible to receive unemployment benefits. We affirm.

### FACTS

Relator Ross Rittgers worked full-time for respondent Automotive Parts Solutions, Inc. (APS), an automotive recycler, from November 2009 until he was discharged on February 15, 2010. Rittgers applied for unemployment benefits, and a Department of Employment and Economic Development (DEED) adjudicator determined that Rittgers was discharged for employment misconduct and, therefore, is ineligible to receive unemployment benefits.

Rittgers appealed, and a ULJ held a telephonic hearing on May 4, 2010. Robert Witzman, an operations manager for APS and Rittgers's supervisor, testified that Rittgers was discharged because, on February 13, 2010, Rittgers took a truck tailgate from the scrap yard without authorization, violated APS's employment policy by driving his vehicle in a restricted area, and conducted personal activities while on duty.

The week before he was discharged, Rittgers received an unsatisfactory performance rating for failing to properly perform his work and wasting time on the job. Witzman also warned Rittgers in writing not to conduct personal activities during work hours.

One of APS's employment policies prohibits employees from operating personal vehicles in an area of the scrap yard where automotive parts are stored. This policy appears in APS's employment policy handbook, which Rittgers received and agreed in writing to comply with when he began his employment with APS. Witzman directed Rittgers not to drive his personal vehicle in the restricted area of the scrap yard. APS requires employees who purchase automotive parts for personal use to follow the same process that customers follow; namely, to order, pay, and pick up the part in a different, nonrestricted area of the scrap yard.

Two days before his discharge, Rittgers reported to work to complete several specifically assigned tasks. Travis Eveslage, a salesman, and James Adelman, a shipping assistant, also were working that day. Adelman observed Rittgers cutting pieces from vehicles on which Rittgers was not assigned to work. At approximately 11:15 a.m., Eveslage and Adelman observed Rittgers drive his vehicle into the restricted area of the scrap yard and begin loading the cab and the attached windshield of a Ford F-150 pickup truck onto his vehicle's trailer. On at least one prior occasion, Rittgers drove his personal vehicle into the restricted area to collect parts that he purchased from APS.

Eveslage notified Witzman by telephone of Rittgers's actions; and Witzman advised Eveslage that Rittgers had purchased the cab and windshield, but Rittgers was not authorized to drive his vehicle into the restricted part of the scrap yard. Rittgers remained in the restricted area with his vehicle for approximately 45 minutes. Shortly after noon, when Rittgers exited the scrap yard, Eveslage and Adelman observed several automobile parts in the backseat of the cab, which was on Rittgers's trailer, including a

maroon F-150 tailgate that matched the color of the cab. After Rittgers left, Eveslage notified Witzman by telephone that Rittgers took the tailgate and other parts.

The following Monday, Eveslage and Adelman again advised Witzman that Rittgers had driven his personal vehicle into the restricted area, conducted personal activities during work hours, and took the tailgate when he departed on Saturday. Witzman verified that the tailgate of the truck was missing from the scrap yard and concluded that the tailgate had disappeared sometime late on the preceding Friday or on Saturday. Witzman also discovered that Rittgers had failed to punch his timecard at the end of his shift on Saturday. Witzman subsequently terminated Rittgers's employment. Witzman gave Rittgers a written termination letter, and Rittgers left the office.

At the hearing, Rittgers admitted that he pulled his vehicle into the restricted area without permission and spent approximately 30 minutes loading the cab onto his vehicle. He testified that he intended to punch out at 11:20 a.m. before loading the cab, but he forgot to do so. He also acknowledged that he had forgotten to punch out on previous occasions. Rittgers admitted that he knew about APS's employment policy prohibiting personal vehicles from entering the restricted part of the scrap yard and explained that he violated the policy because it was more convenient to load the cab in the restricted area. Rittgers denied taking the tailgate or removing parts from cars on which he was not assigned to work. He speculated that Adelman and Eveslage conspired to get Rittgers discharged by accusing him of stealing the tailgate.

In her May 5, 2010 decision, the ULJ found that Rittgers engaged in a serious violation of the standards of behavior that his employer has the right to reasonably expect

of its employees and that he displayed a substantial lack of concern for his employment. Therefore, the ULJ concluded, Rittgers is ineligible to receive unemployment benefits because he was discharged for committing employment misconduct. Following Rittgers's request for reconsideration, the ULJ affirmed her earlier decision. This certiorari appeal followed.

## D E C I S I O N

When reviewing the decision of a ULJ, we may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are “(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious.” Minn. Stat. § 268.105, subd. 7(d) (2010).

Whether an employee engaged in employment misconduct presents a mixed question of law and fact. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether an 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 review the ULJ's factual findings in the light most favorable to the decision and will not disturb them on appeal if there is evidence that reasonably tends to sustain those findings. *Schmidgall*, 644 N.W.2d at 804. Because credibility determinations are the exclusive province of the ULJ, we accord such determinations deference on appeal. *Skarhus*, 721 N.W.2d at 344.

But whether a particular act constitutes employment misconduct is a question of law, which we review de novo. *Schmidgall*, 644 N.W.2d at 804.

An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). Employment misconduct is “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) (2010). A single incident of employee theft is employment misconduct because the theft undermines the employer’s trust in the employee and the employer’s ability to assign essential functions to that employee. *Pierce v. DiMa Corp.* (1992), 721 N.W.2d 627, 630 (Minn. App. 2006). A knowing violation of an employer’s directives, policies, or procedures also constitutes employment misconduct because it demonstrates a willful disregard of the employer’s interests. *Schmidgall*, 644 N.W.2d at 804, 806-07.

The ULJ found that Rittgers stole the tailgate from the scrap yard and drove his vehicle into the restricted area despite prior warnings not to do so and in contravention of APS’s employment policy prohibiting this conduct. The ULJ’s findings are supported by substantial evidence, including testimony of two witnesses with personal knowledge of Rittgers’s theft and policy violation, Rittgers’s admission that he violated the policy, and evidence of prior warnings to Rittgers for failing to abide by APS’s employment policies. The ULJ expressly gave greater weight to the testimony of witnesses who testified on

behalf of APS, finding their testimony to be clearer, more specific, more detailed, and more plausible than Rittgers's testimony.

Rittgers challenges the ULJ's determination of witness credibility and resolution of conflicting testimonial evidence, identifying several minor inconsistencies in the testimony of Eveslage and Adelman and instances in which Rittgers's account of the events differs from the accounts offered by APS's witnesses. This argument is misplaced. Credibility determinations, including the resolution of conflicting testimony, are the exclusive province of the ULJ, and we will not disturb them on appeal. *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007).

Rittgers also challenges the ULJ's finding that he stole the tailgate because other employees had access to the scrap yard during the period when the tailgate was taken and APS did not report the alleged theft to the police. Although other employees had access to the scrap yard on February 13, only Rittgers's allegations, which the ULJ determined were not credible, support an alternative finding. Witzman testified that APS decided not to report the theft because APS was satisfied that terminating Rittgers's employment adequately resolved the situation. Moreover, the record contains substantial evidence that Rittgers took the tailgate. In addition to the testimony of Eveslage and Adelman, it is undisputed that the color and style of the missing tailgate matched the cab Rittgers purchased from APS. In light of the ULJ's credibility determinations, the evidence amply supports the ULJ's finding that Rittgers stole the tailgate.

Moreover, Rittgers's admission that he knowingly violated APS's employment policy by driving his personal vehicle into the restricted portion of the scrap yard is

sufficient evidentiary support for the ULJ's finding that he committed employment misconduct. *See Schmidgall*, 644 N.W.2d at 806 (holding that "an employee's decision to violate knowingly a reasonable policy of the employer is misconduct"). Rittgers did not have permission to drive his vehicle into the restricted area, he had violated APS's employment policy before, and he had been warned to adhere to APS's employment policy just days before he committed the violation, resulting in his discharge from employment. We also reject Rittgers's contention that APS applied its policies inconsistently and treated its employees differently because it is without evidentiary support in the record.

In sum, Rittgers's arguments are unavailing because they are rooted in a factual dispute that the ULJ resolved based on her assessment of witness credibility and evidentiary weight. The ULJ's findings that Rittgers stole the tailgate and violated APS's employment policies by driving onto the restricted part of the scrap yard are supported by substantial evidence. Accordingly, the ULJ did not err by concluding that Rittgers is ineligible for unemployment benefits because he was discharged for employment misconduct.

**Affirmed.**