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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1546**

Jermishia Saunders,
Relator,

vs.

I C System, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 3, 2011
Affirmed
Toussaint, Judge**

Department of Employment and Economic Development
File No. 25275416-3

Jermishia S. Saunders, Maplewood, Minnesota (pro se relator)

I C System, Inc., St. Paul, Minnesota (respondent)

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

Considered and decided by Hudson, Presiding Judge; Toussaint, Judge; and
Crippen, Judge.*

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

UNPUBLISHED OPINION

TOUSSAINT, Judge

Relator Jermishia Saunders challenges the decision of the unemployment-law judge (ULJ) that she is ineligible for unemployment benefits because she was discharged for employment misconduct, arguing that the evidence does not support the ULJ's findings and that her absence from work was not employment misconduct. We affirm.

DECISION

The ULJ found that Saunders was ineligible for unemployment benefits because she was discharged for employment misconduct, namely, "continued absences from work without notice" to her employer, respondent I C System, Inc.

An employee who is discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4 (2010). Whether a particular act is employment misconduct is a question of law, which we review de novo. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But whether the act occurred is a question of fact. *Id.* The ULJ is in the best position to evaluate credibility and weigh conflicting evidence, and we will not disturb the ULJ's factual findings if the evidence substantially sustains them. *Id.*

Employment misconduct is any intentional, negligent, or indifferent conduct that displays clearly (1) a serious violation of the standards of behavior the employer may reasonably expect or (2) a substantial lack of concern for the employment. Minn. Stat. § 268.095, subd. 6(a) (2010). An employee's absence is not misconduct if the employee gives the employer proper notice and the absence is due to the employee's or an

immediate family member's illness or injury. *See id.*, subd. 6(b)(7)-(8) (2010); *see also Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002) (employee's refusal to abide by employer's reasonable policies and requests is misconduct); *Hill v. Contract Beverages, Inc.*, 307 Minn. 356, 358, 240 N.W.2d 314, 316 (1976) (responsibility of arranging transportation to work "is usually considered the problem of the employee"); *Del Dee Foods, Inc. v. Miller*, 390 N.W.2d 415, 417-18 (Minn. App. 1986) (even a single unexcused absence may constitute misconduct).

Saunders last worked on April 27, 2010. The ULJ found that Saunders did not work on April 28 because of transportation problems; did not request a leave of absence or notify I C System that she would be absent after April 28; and was not at work between April 30 and May 6, which prompted I C System to fire her on May 7.

I C System's attendance policy requires an employee to call and notify her supervisor of an unscheduled absence within one hour of her start time; two consecutive unscheduled absences are "considered a voluntary termination, and cause for dismissal." A representative for I C System testified that Saunders last worked on April 27, 2010, and that she was absent without notice from April 30 through May 6. I C System provided Saunders with notice of termination of employment on May 7.

Saunders testified that her last day was April 27, and that it was her understanding that "that's the day they had their decision made up." Saunders testified that she called her employer on April 28 to provide notice that she would be absent because she did not have child care and did not have transportation after her car's transmission failed. She acknowledged that she did not request a leave of absence and that she missed work,

without giving notice, on April 29 and 30.

Saunders now argues that the ULJ's decision is based on "false evidence" and that her evidence that she was terminated on April 27 should have been believed. Saunders also contends that the ULJ failed to "cross examine any information provided" by I C System. But the record reflects that Saunders received a fair and thorough hearing. The ULJ specifically found that I C System's evidence was credible and that Saunders missed multiple days of work without providing notice. The record evidence substantially sustains the ULJ's factual findings. We agree with the ULJ that Saunders's absences were disqualifying employment misconduct.

Affirmed.