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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1625**

Ryan Larson,
Relator,

vs.

H & S Welding, Heating & A/C, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 6, 2011
Affirmed
Toussaint, Judge**

Department of Employment and Economic Development
File No. 25424417-3

Ryan Larson, Rockville, Minnesota (pro se relator)

H & S Welding, Heating & A/C, Inc., St. Cloud, Minnesota (respondent)

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

Considered and decided by Klaphake, Presiding Judge; Toussaint, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

TOUSSAINT, Judge

Relator Ryan Larson challenges the decision of the unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he was discharged for employment misconduct, arguing that the true reason for his discharge was that he requested to be paid compensation for the time he was on call. Because the evidence in the record substantially supports the ULJ's decision that Larson was terminated because of employment misconduct, we affirm.

DECISION

The ULJ found that Larson was ineligible for unemployment benefits because he was discharged for employment misconduct, namely, his absences from work without providing notice, his refusal to work overtime as scheduled when he was not caring for his child, and his conduct in not replacing a gas cap while on a service call.

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.* We defer to the ULJ's credibility evaluation and the weight of 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 only if the employee gives the employer proper notice and the absence is because of 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, 806 (Minn. 2002) (observing that 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) (stating that 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) (holding that even a single unexcused absence may constitute misconduct).

The ULJ found that Larson was absent from work 10 times for personal reasons in the approximately 11 months that he worked for respondent H & S Welding, Heating & A/C, Inc.¹ While Larson usually notified his employer of each absence shortly before the start of his scheduled shift, he did not request permission for his absences in advance and did not call or report for work on April 8, 2010. This finding is substantially supported by the record, and Larson does not challenge the accuracy of the finding. The ULJ decided that these absences were employment misconduct. The ULJ also found that Larson made a service call to repair a residential garage heater and failed to replace the cap on the gas valve after completing the repairs. The customer notified the employer

¹ The ULJ also found that Larson was absent from work for 14 days due to illness or non-work-related injuries, but these absences were not found to be employment misconduct.

that the heater was not working and a gas odor could be detected in the house. Another H & S employee had to return to the residence and replace the cap; if the gas had ignited, the house would have exploded. The ULJ found that Larson's carelessness in not replacing the gas cap and his refusal to work mandatory overtime when he was not caring for his son also constituted employment misconduct. These findings are also supported by the record.

On appeal, Larson offers no argument that the ULJ's finding that he committed certain actions or conclusion that these actions constitute employment misconduct is erroneous. Instead, Larson argues that he was terminated simply because he asked to be compensated for the time he was on call, asserting that the on-call issue was the only thing discussed during the meeting at which his employment was terminated. But the ULJ specifically found that Larson was terminated for a number of reasons, including those discussed above. The record substantially sustains the ULJ's factual finding that Larson was terminated for more reasons than just his request for compensation, and we agree that these reasons constitute employment misconduct.

Affirmed.