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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1868**

Tineka Moore,
Relator,

vs.

Minnesota Lung Center, Ltd.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 8, 2011
Reversed; motion denied
Ross, Judge**

Department of Employment and Economic Development
File No. 25651375-3

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Considered and decided by Ross, Presiding Judge; Stoneburner, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Tineka Moore was a sleep technician employed by the Minnesota Lung Center when she was involuntarily discharged after allowing her training to fall behind her position's changing qualifications. She appeals an unemployment law judge's decision that the Lung Center discharged her for employment misconduct, rendering her ineligible to receive unemployment benefits. Because the record establishes that Moore's failure to complete the required training resulted from her financial inability, which is not employment misconduct, we reverse.

FACTS

Tineka Moore had been a sleep technician for the Minnesota Lung Center from October 2006 until July 2010, when the Lung Center discharged her for not completing required training. In 2009, the Lung Center's accrediting body, the American Academy of Sleep Medicine, imposed new accreditation standards for the training of sleep technicians. Moore could have kept her training current and retained her job by completing an online training program. The Lung Center informed employees about the program, called "A-Step," in a May 2009 memorandum. Some details about the A-Step program were available in material published by an industry board of sleep technicians (BRPT), which Moore read. The Lung Center's memorandum required enrollment in A-Step by July 1, 2009, and Moore enrolled on time. But the memorandum announced no completion deadline. The BRPT materials indicated a deadline of July 2011.

The A-Step training program was expensive to Moore. Separated from her husband, she lived “paycheck to paycheck” raising six children. The program required a \$60 registration fee and consisted of 14 “modules,” each requiring a \$40 prepayment. After completing all 14 modules, participants had 30 days to register for an examination that they must then complete within another 30 days. The examination registration fee was \$450. The Lung Center would reimburse employees up to \$200 annually for training, and it offered to advance 2011 reimbursements in 2010. It would also reimburse the exam fee for employees who passed. Moore paid the course registration fee and completed two modules in 2010, but miscommunication between her and her supervisor prevented her from being reimbursed. Moore calculated that she could be reimbursed only \$400 toward her remaining cost of \$480 for the uncompleted modules.

On May 24, 2010, the Lung Center announced a deadline for the A-Step training program, strictly requiring all sleep technicians to have completed it by July 1, 2010—only five weeks after the announcement and one full year earlier than the deadline indicated by the BRPT. Moore unsuccessfully sought financial help to complete the program within the five-week deadline, soliciting family and friends, including her estranged husband.

The Lung Center terminated Moore’s employment on July 2 because she did not complete the A-Step program before the July 1 deadline. Moore applied for unemployment benefits, and the Minnesota Department of Employment and Economic Development (DEED) found her ineligible. She appealed, and an unemployment law judge (ULJ) agreed with DEED that her failure to complete the A-Step program resulted

from employment misconduct. He held that Moore had been negligent based on his belief that “[t]he burden associated with the A-Step course was not significant” and that Moore’s claim of financial inability was “not plausible.” He held that Moore’s failure constituted employment misconduct rendering her ineligible to receive unemployment benefits, and he affirmed the holding on reconsideration.

Moore appeals by writ of certiorari.

D E C I S I O N

Moore challenges the ULJ’s decision that she is ineligible for unemployment benefits. When reviewing an unemployment-benefits decision, we may modify, remand, or reverse a ULJ’s decision if the relator’s substantial rights were prejudiced because the findings, conclusion, or decision are affected by an error of law, unsupported by substantial evidence, or are arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d) (2010). We reverse today because we believe that the ULJ’s decision is unsupported by substantial evidence.

The record does not support the conclusion that Moore’s failure to complete the A-Step training program before the Lung Center’s deadline resulted from employment misconduct. An applicant discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4 (2010). Employment misconduct is any intentional, negligent, or indifferent conduct that clearly displays either a serious violation of the behavioral standards the employer can reasonably expect or a substantial lack of concern for the employment. Minn. Stat. § 268.095, subd. 6(a) (1) – (2) (2010). We review *de novo* whether a particular act constitutes employment misconduct. *Skarhus*

v. Davanni's Inc., 721 N.W.2d 340, 344 (Minn. App. 2006). We must decide whether the ULJ accurately characterized Moore's training failure as "negligent."

The ULJ concluded that Moore acted negligently both before and after the Lung Center imposed the A-Step deadline on May 24, 2010. We do not share either conclusion.

Moore's conduct before the Lung Center imposed the deadline was not negligent. It is true that Moore knew about the A-Step training requirement since 2009 and that she would have completed it before the deadline had she begun immediately and maintained a faster training pace. But the record reflects that until the Lung Center's May 2010 announcement, Moore had reason to believe that she faced a deadline of July 2011, not July 2010. Under that belief, her failure to have arranged to complete the training at a faster pace does not constitute negligence. An employer may set the training standards for its employees, including deadlines to attain them, but in this case the employer set no clear deadline at all. Although it would have been reasonable and arguably better for Moore to have asked the Lung Center to reveal its training-completion deadline when it announced the training requirement, she reasonably inferred from the Lung Center's silence that it would apply the same deadline indicated on the BRPT. Given the reasonableness of that inference, Moore's failure to more rapidly schedule the A-Step training and reimbursement process constitutes merely "a good faith error in judgment," which is not employment misconduct. Minn. Stat. § 268.095, subd. 6(b) (2010).

We also do not construe as negligence Moore's failure to complete the training during the five-week period of May 24 to July 1. The ULJ's finding of negligence assumes that Moore had time to have completed her remaining training during this span.

But Moore also faced financial challenges. An employee does not commit misconduct when she fails for financial reasons to meet an employment standard. *See Cherry v. Am. Nat'l Ins. Co.*, 426 N.W.2d 475, 477 (Minn. App. 1988) (applying earlier version of misconduct statute). The record reflects without contradictory evidence that Moore lacked the means to pay the upfront cost of the A-Step training. The ULJ's conclusion that Moore's claims of financial inability were "not plausible" apparently rest on his perception that the cost of the A-Step program was not exorbitant. But the reasonableness of the training cost says nothing of Moore's ability to afford it. The ULJ made no finding that Moore was incredible when she testified that she was financially unable to front the various costs.

The ULJ clearly erred by failing to recognize that Moore's financial inability prevented her from successfully completing the A-Step training between the Lung Center's May 24 announcement and its July 1 deadline. The evidence indicates that Moore tried to obtain the funds from acquaintances to pay for the training. We are not persuaded by DEED's contention that Moore acted indifferently toward her job by failing to inform the Lung Center of her financial challenges and ask for a different reimbursement scheme. DEED implicitly argues that an employee who asks family and friends for financial help to meet her training obligation acts negligently if she fails *also* to ask her employer for financial help. We reject the argument as unreasonable and unsupported by statute. We add that the uncontested evidence indicates that Moore in fact did tell a supervisor that she could not afford the course and that the Lung Center still did

not provide any of the financial accommodations that DEED argues Moore had a duty to request.

We do not suggest that the Lung Center was obligated to have lessened its training standards, extended its deadline, or made special reimbursement arrangements for Moore. Nor do we suggest that it owed her a legal duty to maintain her employment. *See Swanson v. Columbia Transit Corp.*, 311 Minn. 538, 540, 248 N.W.2d 732, 733 (1976) (holding that employee's actions may be sufficient basis for discharge while still not qualifying as employment misconduct). We hold only that Moore's approach to the training does not constitute negligence-based employment misconduct and that the ULJ erred by deeming her ineligible for benefits on that ground.

During this appeal, DEED moved this court under Minn. R. Civ. App. P. 128.02, subd. 5, for permission to file supplemental briefing on the question of whether the employer has the burden to prove employment misconduct. We do not believe that additional briefing is necessary or would be helpful.

Reversed; motion denied.