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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-2287**

Archie Anderson,  
Relator,

vs.

Allina Health System,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed August 29, 2011  
Affirmed  
Halbrooks, Judge**

Department of Employment and Economic Development  
File No. 26232491

Archie Anderson, Anoka, Minnesota (pro se relator)

Sara Gullickson McGrane, Jessica M. Marsh, Felhaber, Larson, Fenlon & Vogt, P.A.,  
Minneapolis, Minnesota (for respondent Allina Health System)

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 Halbrooks, Presiding Judge; Hudson, Judge; and  
Collins, Judge.\*

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

## UNPUBLISHED OPINION

**HALBROOKS**, Judge

Relator challenges the unemployment-law judge's (ULJ) determination that he is ineligible for unemployment compensation because he was terminated for employment misconduct. We affirm.

### FACTS

Relator Archie Anderson worked for respondent Allina Health System from January 2004 until September 22, 2010. As part of his duties, Anderson was required to call patients who had received in-home continuous positive airway pressure (CPAP) equipment to ask follow-up questions. Anderson was required to record the patients' answers on a form. On September 15, 2010, Anderson turned over ten of these forms to a coworker. The coworker suspected that the forms had been forged and notified her and Anderson's supervisor, Sharon Hansen.

Hansen contacted the patients to investigate whether Anderson had conducted his follow-up survey before filling out the forms. Hansen spoke to four of the patients that day. Those patients told Hansen that they did not remember speaking to anyone else about their CPAP equipment, and when Hansen asked the patients the questions on the forms, some of their answers differed from what was indicated on the forms. Hansen testified that she decided to terminate Anderson on September 16, 2010, after speaking with the four patients, and two additional patients who returned her call in the following days and had similar responses.

On September 21, 2010, Anderson notified Allina that he would be requesting leave pursuant to the Family Medical Leave Act (FMLA) to care for his wife following her impending surgery. On September 22, 2010, Hansen informed Anderson that he was terminated due to the falsified forms.

Anderson applied for unemployment compensation and respondent Minnesota Department of Employment and Economic Development (DEED) denied his application. Anderson appealed, claiming that his termination was actually in retaliation for informing Allina of his intent to use FMLA protection. After a telephone hearing, the ULJ concluded that Anderson is not eligible for unemployment compensation because he was terminated for employment misconduct. Anderson requested reconsideration, and the ULJ affirmed his decision. This appeal follows.

## **D E C I S I O N**

When reviewing the decision of a ULJ, we may affirm the decision, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced. Minn. Stat. § 268.105, subd. 7(d) (2010).

### **I.**

An employee who is discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). “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) (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). This court reviews the ULJ's factual findings "in the light most favorable to the decision." *Id.* In doing so, this court "will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Id.*

Although in the course of her testimony Hansen consulted the forms that Anderson completed, the documents themselves were not offered into evidence. Anderson claims that Allina's failure to offer the actual forms into evidence casts doubt on Allina's version of events. Credibility determinations, including the resolution of conflicting testimony, are the exclusive province of the ULJ, and this court will not disturb them on appeal. *Id.* at 345. Here, the ULJ found Hansen to be more credible than Anderson. The ULJ found that

[Hansen] gave detailed testimony regarding contacting the patients and the conversations she had with them. The patients had no reason to state that they had not been previously contacted if, in fact, Anderson had called them; and there is no explanation as to why the answers they gave when Hansen asked them the questions on the follow-up form differed from the answers recorded by Anderson. There is also no apparent reason Hansen would have to fabricate her testimony. Anderson's testimony was self-serving. Hansen's testimony is more credible.

The record supports the ULJ's finding that Anderson falsified the forms, despite the fact that Allina did not provide the forms as evidence.

Anderson also claims that he was not terminated for falsifying the forms; he argues that he was terminated because he notified his employer on September 21, 2010, of his intent to utilize his FMLA leave. But again, the ULJ found Hansen's testimony to be credible; Hansen testified that she decided to terminate Anderson on September 16, 2010—despite the fact that Anderson was not notified of his termination until September 22, 2010. Anderson therefore failed to rebut Allina's testimony that he was terminated for the falsification of forms.

The next question we must address is whether the falsification of the forms constitutes employment misconduct. Whether a particular act constitutes employment misconduct is a question of law, which we review de novo. *Schmidgall*, 644 N.W.2d at 804. Anderson argues that the falsification of the forms should not be considered employment misconduct because the follow-up surveys were not required in order to receive reimbursement. We disagree. "Dishonesty that is connected with employment may constitute misconduct." *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305, 307-08 (Minn. App. 1994) (holding 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 the integrity of employees). Anderson's falsification of these documents was dishonest, regardless of whether reimbursement was still possible. We conclude that Anderson's actions fall within the definition of employment misconduct. We therefore affirm the ULJ's conclusion that Anderson is ineligible for unemployment compensation.

## II.

Anderson also claims he did not receive a fair hearing because the majority of the hearing involved the testimony of Allina's witnesses, he was not allowed to read a prepared statement, and the ULJ did not receive the falsified forms until after he issued his decision. In a fair hearing, the ULJ fully develops the record, assists unrepresented parties in presenting a case, and explains the procedure and the terms used throughout the hearing. Minn. Stat. § 268.105, subd. 1(b) (2010); Minn. R. 3310.2921 (2009). A hearing is generally considered fair if both parties are afforded the opportunity to give statements, cross-examine witnesses, and offer and object to exhibits. *See Ywswf v. Teleplan Wireless Servs. Inc.*, 726 N.W.2d 525, 529-30 (Minn. App. 2007).

The ULJ afforded the parties all such opportunities. Although the ULJ told Anderson he could not read a prepared statement, the ULJ explained that Anderson could use the statement to refresh his memory and then testify to what he believed transpired. Anderson chose not to do so. Anderson was given the opportunity to ask questions of all the witnesses, he was allowed to testify, and he was offered the opportunity to give a closing statement. We therefore conclude that the ULJ conducted a fair hearing.

**Affirmed.**