

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-142**

Gerald Jorgenson,
Relator,

vs.

Compass One, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

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

Department of Employment and Economic Development
File No. 26285081-3

Gerald Jorgenson, Minneapolis, Minnesota (pro se relator)

Thomas J. Conley, Law Office of Thomas J. Conley, Minneapolis, Minnesota (for
respondent)

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

Considered and decided by Minge, Presiding Judge; Halbrooks, Judge; and
Larkin, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Relator challenges an unemployment-law judge's (ULJ) determination that he is ineligible to receive unemployment benefits because he was discharged for employment misconduct. We affirm.

FACTS

Relator Gerald Jorgenson began working in a food-service business owned by Compass One, LLC, in August 2005. Jorgenson was discharged from his employment on October 7, 2010, for three reasons. First, Jorgenson sold food to customers at discounted rates or gave food to customers for free, without receiving permission to do so from his supervisor. Although Jorgenson's supervisor told him to stop this practice, an employee subsequently informed the supervisor that Jorgenson sold cookies in an unauthorized "two for one" sale. Second, in late July or early August 2010, Jorgenson sent numerous e-mails to his supervisor that contained negative personal remarks about the supervisor and at least one co-worker. Jorgenson's supervisor informed him that the e-mails constituted insubordination and gave him a "final warning." Third, Jorgenson disobeyed a directive from his supervisor not to order certain food products. The supervisor discontinued the products because they did not sell well and often would expire before they could be sold. Despite this directive, Jorgenson ordered the food products. He explained that he had received a request from a customer for the product and that the customer, not the supervisor, is Jorgenson's boss.

Jorgenson applied for unemployment benefits. The Department of Employment and Economic Development (DEED) issued a determination of ineligibility on the ground that Jorgenson had been discharged for employment misconduct. Jorgenson appealed the determination, and a ULJ held a telephonic evidentiary hearing. The ULJ issued a decision concluding that Jorgenson is ineligible for unemployment benefits. Jorgenson requested reconsideration of the ineligibility determination, and the ULJ affirmed the determination. Jorgenson appeals by way of a writ of certiorari.

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 may 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).

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). Whether an employee is ineligible for

unemployment benefits due to employment misconduct presents a mixed question of law and fact. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether an employee committed a particular act is a question of fact, and the ULJ's factual findings are viewed in the light most favorable to the decision being reviewed. *Id.* But whether a particular act constitutes employment misconduct is a question of law that we review *de novo*. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

“[R]efusing to abide by an employer’s reasonable policies and requests amounts to disqualifying [employment] misconduct.” *Id.* The record demonstrates that Jorgenson’s supervisor informed him not to order certain food products. We discern nothing unreasonable about this business-related directive. Despite the directive, Jorgenson ordered a product that his supervisor had told him not to order. This was a deliberate act of insubordination and not the result of mistake or accident. Jorgenson testified that he ordered the product because a customer requested it. We agree with the ULJ’s conclusion that “this is not a valid excuse for ignoring the instructions from the supervisor.”

Jorgenson argues that his supervisor made a number of misrepresentations in his testimony to the ULJ about the incidents preceding Jorgenson’s discharge. Jorgenson’s objections to the supervisor’s testimony present a credibility issue. But the ULJ concluded that the supervisor’s testimony was more credible than Jorgenson’s. Credibility determinations are within “the exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus*, 721 N.W.2d at 345.

Because Jorgenson's actions display clearly a serious violation of the behavioral standards that his employer had a right to reasonably expect and therefore constitute employment misconduct, we affirm the ULJ's determination that he is ineligible to receive unemployment benefits.

Affirmed.

Dated:

Judge Michelle A. Larkin