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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-1608**

Sera Horse,  
Relator,

vs.

LPS Services, Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed May 6, 2013  
Affirmed  
Toussaint, Judge \***

Department of Employment and Economic Development  
File No. 29797382-3

Sera Horse, Rochester, Minnesota (pro se relator)

Antone Melton-Meaux, Nora J. Kaitfors, Jackson Lewis LLP, Minneapolis, Minnesota  
(for respondent LPS Services, Inc.)

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

Considered and decided by Stauber, Presiding Judge; Bjorkman, Judge; and  
Toussaint, Judge.

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

## UNPUBLISHED OPINION

TOUSSAINT, Judge

Relator challenges the unemployment-law judge's (ULJ) determination that he was discharged for employment misconduct and is ineligible to receive unemployment benefits. Because the evidence substantially supports the ULJ's findings and relator committed employment misconduct, we affirm.

### DECISION

An employee who is discharged for "employment misconduct" is not eligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2012). 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) (2012). Whether an employee committed a particular act is a question of fact, which we review for substantial evidence. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But whether an employee's actions constitute employment misconduct is a question of law, which we review de novo. *Id.*

The ULJ determined that relator Sera Horse committed employment misconduct by delivering a letter that disparaged his employer, respondent LPS Services Inc. (LPS), to a client while refusing to discuss his grievances with management or human resources. Substantial evidence supports the ULJ's determination. Horse was upset with LPS's resolution of an incident involving a customer. As a result, he sent a letter to LPS on May 10, 2012, criticizing senior project manager Paul Krogseng and refusing to speak

with him unless a third party was present. A few days later, Horse refused to accept a call from human resources. Finally, Horse delivered a letter to the City of Rochester (the city), LPS's client, reporting his grievances and disparaging the company.

We conclude that Horse's actions constitute misconduct. Instead of following LPS's internal procedures for filing complaints, Horse disparaged LPS in a letter sent to the company's client. This conduct was a serious violation of the standards of behavior that LPS has a right to expect. Moreover, Horse's letter attempted to interfere with LPS's contract to manage the city's parking ramps. The letter criticizes LPS and states the city may soon experience "buyer's remorse." By attempting to interfere with LPS's contract, Horse violated his duty of loyalty to LPS and engaged in misconduct. *See Marn v. Fairview Pharmacy Servs. LLC*, 756 N.W.2d 117, 121-22 (Minn. App. 2008).

Horse argues that he did not refuse to speak with human resources or management. The ULJ found that he did and because substantial evidence supports the ULJ's findings, we disagree. In the May 10 letter, Horse refused to speak with Krogseng unless a third party was present and requested "Krogseng to stay the hell away from [him]." Krogseng testified that Horse "refused to talk to me and put in writing that he did not want to meet with me." On May 15, Horse declined to take a call from human resources. Horse also did not attempt to discuss his grievances with LPS following the May 10 letter; rather, he sent a disparaging letter to LPS on May 16, which he later delivered to the city. Finally, even if Horse did not refuse to speak with management and human resources, he

committed misconduct by sending a letter that disparaged his employer to a client. We concluded that Horse is not eligible to receive unemployment benefits.

**Affirmed.**