**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A12-0308**

Johnson J. Pragoo,
Relator,

vs.

Macy's Retail Holdings, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed November 13, 2012**
**Affirmed**
**Collins, Judge**[*]

Minnesota Department of Employment and Economic Development
File No. 28640022-3

Johnson J. Pragoo, Minneapolis, Minnesota (pro se relator)

Macy's Retail Holdings, Inc. c/o Talx UCM Services, Inc., St. Louis, Missouri (respondent)

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

Considered and decided by Larkin, Presiding Judge; Schellhas, Judge; and Collins, Judge.

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

## U N P U B L I S H E D  O P I N I O N

**COLLINS**, Judge

Relator challenges the decision of the unemployment law judge (ULJ) that relator was discharged due to employment misconduct and is ineligible for unemployment benefits. We affirm.

## FACTS

Relator Johnson Pragoo was employed by respondent Macy's Retail Holdings Inc. from 1979 through August 26, 2011. In January 2011, Pragoo's shift supervisor noticed he was clocking out and then returning to finish his assigned work. During two separate conversations with supervisors, Pragoo was told of Macy's expectation that he remain clocked in while working.

On February 23, 2011, Macy's discovered Pragoo taking expired food items from the store. During a meeting about the incident, Pragoo stated that he often did not take his breaks and would return to work after clocking out. He believed taking the expired food that would otherwise be thrown out contributed to paying him. Pragoo was suspended pending further review.

On March 4, 2011, Pragoo met with D.W., a Macy's human-resources manager. Pragoo detailed the instances when he had worked after clocking out, totaling 1597 minutes. Although Pragoo did not request compensation, D.W. informed him that Macy's was legally required to pay him for this unrecorded time. On March 18, 2011, Macy's placed Pragoo on decision-making leave and issued him an oral and written

warning regarding his clocking-out practices. Pragoo noted on the written warning that he agreed to conform to Macy's policies.

On August 10, 2011, Pragoo indicated to a supervisor that he was going to clock out and then return to work. Pragoo met with D.W. and completed another report of unrecorded time. This report demonstrated that Pragoo had continued to clock out and return to work every week since the report in March. On August 26, 2011, Macy's fired Pragoo for the sole reason of not accurately recording his time; no issue was made of the expired-food incident.

Pragoo applied for unemployment benefits, and the application was initially approved by respondent Minnesota Department of Employment and Economic Development (DEED). Subsequently, Pragoo was determined to be ineligible for benefits after DEED learned that he was discharged for employee misconduct. Pragoo was granted a hearing challenging this determination, following which the ULJ concluded that Pragoo had been discharged for employee misconduct and is ineligible for unemployment benefits.[1] Pragoo requested reconsideration, and the ULJ affirmed the decision. This certiorari appeal followed.

## D E C I S I O N

On certiorari appeal, we review the decision of a ULJ to determine whether the substantial rights of a relator have been prejudiced because the findings, inferences, conclusion, or decision are "(1) in violation of constitutional provisions; (2) in excess of

[1] Because of the initial approval of benefits Pragoo had received $850 of unemployment compensation. The ULJ ordered this amount be returned to DEED.

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).

Pragoo challenges his ineligibility for unemployment benefits, arguing that he did not commit misconduct, did not receive adequate warnings regarding the clocking-out procedures, but did act with his supervisor's approval. Determining if an employee engaged in certain conduct presents a mixed question of law and fact, but whether that conduct constitutes misconduct is reviewed de novo. *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). A ULJ's factual findings are reviewed in the light most favorable to the decision and will not be disturbed on appeal if there is evidence that substantially sustains those findings. *Id*., Minn. Stat. § 268.105, subd. 7(d)(5) (2010).

Employment misconduct includes "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." Minn. Stat. § 268.095, subd. 6(a) (2010). A knowing violation of an employer's directives, policies, or procedures constitutes employment misconduct because it demonstrates a willful disregard of the employer's interests. *See Schmidgall*, 644 N.W.2d at 806-07. An employee discharged

for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010).

The ULJ determined that Pragoo committed employment misconduct when he disregarded the warnings he received relating to his practice of clocking out and returning to work. Pragoo contends that Macy's fabricated much of the evidence presented to the ULJ regarding such warnings. But because credibility determinations are within the sole province of the ULJ, we accord them deference on appeal. *Skarhus*, 721 N.W.2d at 344.

The ULJ found that, even accepting Pragoo's version of the facts, "[o]nce he received a final written warning on March 18, 2011, Pragoo knew or should have known that staying to work after he punched out was not acceptable" to Macy's. This written warning stated: "All time records must reflect all your actual time work[ed] with accuracy and precision." Pragoo indicated his understanding of this expectation when he wrote, without suggestion, that "[i]t is my sole duty to perform my duty excellently at all times, unquestionably I did what I did (exit time clock then finished some work, straightened up things before punching in) in the company's (Macy's) interest. Our conversation cleared up all misunderstandings, unquestionably." The entire written warning was read aloud to Pragoo before he signed it. This warning demonstrated Pragoo's understanding of proper clocking-out procedures and what was unacceptable to Macy's. But the record shows that Pragoo continued to clock out and return to work every week thereafter, until his second meeting with D.W. in August 2011. Although Pragoo did so only to complete his assigned work for the day, such behavior nonetheless

demonstrates a knowing violation of an employer's directives and constitutes employment misconduct. *See Schmidgall*, 644 N.W.2d at 806-07.

Because there is substantial evidence in the record to sustain the ULJ's factual findings and the ULJ correctly applied the law, we affirm the ULJ's determination that Pragoo committed employment misconduct and, therefore, is ineligible to receive unemployment benefits.

**Affirmed.**