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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0136**

Sharon E. Brooks,
Relator,

vs.

Community Emergency Assistance Program, Inc.,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed August 19, 2013
Affirmed
Stauber, Judge**

Department of Employment and Economic Development
File No. 30173806-3

Sharon E. Brooks, Brooklyn Park, Minnesota (pro se relator)

Community Emergency Association Program c/o TALX UCM Services, Inc., St. Louis
Missouri (respondent employer)

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

Considered and decided by Stauber, Presiding Judge; Schellhas, Judge; and
Hooten, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

In this certiorari appeal from the unemployment-law judge's (ULJ) final decision that relator is ineligible for unemployment benefits because she left work early without permission and was untruthful about it, relator argues that the ULJ's findings are not supported by substantial evidence and that her conduct did not constitute misconduct. We affirm.

FACTS

Relator Sharon Brooks worked at a food shelf operated by respondent Community Emergency Assistance Program, Inc. (CEAP). Relator typically worked three days a week from 11:30 a.m. until 8:00 p.m. Because the food shelf was located in a "fairly isolated" mini mall, CEAP's policy required that two employees be on site at all times. Employees are instructed to call the supervisor, Annette Willers, if the employee is going to be late or needs to leave early.

On July 21, 2011, relator took an early lunch without permission, resulting in her coworker being left at the food shelf by herself. Relator was warned that she needed prior approval from a supervisor to make changes to her schedule. Several months later, in January 2012, relator failed to notify her supervisor that she would be an hour-and-a-half late for work. Relator was told that her failure to notify her supervisor was "unacceptable."

In February 2012, relator was discharged from her employment with CEAP after she left work early on February 2, without permission, and was then purportedly

untruthful about her actions. Relator subsequently applied for unemployment benefits with respondent Minnesota Department of Employment and Economic Development (department), and a department clerk initially determined that relator was ineligible for benefits because she had been discharged for employment misconduct. Relator appealed that determination and a de novo hearing was conducted.

At the hearing, conflicting stories were presented regarding relator's conduct on February 2. Relator testified that she left work five minutes early because she "received a panicked call[] from [her] daughter who was home alone." Relator also testified that when her supervisor asked relator the following day if she had left work early on February 2, she informed her supervisor that she left work at 7:55 due to a "family emergency."

Willers testified that she called the food shelf four times between 7:30 and 7:40 on February 2, but nobody answered. According to Willers, she then called the personal cell phone of relator's co-worker Linda Burt, who was scheduled to work with relator on February 2. Burt told Willers that relator had left at about 7:30. Burt also told Willers that she was sitting in her car in the parking lot of the food shelf because she was scared and did not want to stay in the food shelf by herself.

Willers testified that she and CEAP's executive director Byron Laher met with relator and Burt the next day. According to Laher, when relator was asked why she left early, relator provided a "fairly detailed" version of the timeline to demonstrate that she had left work only a few minutes early. But when Burt was asked to corroborate relator's story, Burt shook her head "no." Laher then asked relator about the unanswered phone

calls at about 7:30, which prompted relator to “completely change[] her story.” Laher and Willers testified that relator claimed that she and Burt went to their cars a little early because they “felt uncomfortable” in the food shelf. Again, however, Burt would not corroborate relator’s version of the events.

The ULJ found that relator left work “at least 20 minutes early without permission.” The ULJ also found that when confronted by Willers and Laher the next day, relator was dishonest about her behavior. The ULJ concluded that relator’s actions were “serious violations of the standards of behavior CEAP had the right to reasonably expect of her and demonstrated a substantial lack of concern for her employment.” Thus, the ULJ determined that relator was ineligible for benefits because she was discharged for employment misconduct. Relator sought reconsideration, and the ULJ affirmed. This certiorari appeal followed.

D E C I S I O N

When reviewing the decision of a ULJ, this court 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) (2012).

An employee who is discharged for employment misconduct is ineligible to receive 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). “[C]onduct an average reasonable employee would have engaged in under the circumstances” and “good faith errors in judgment if judgment was required” are not considered employment misconduct. *Id.*, subd. 6(b)(4), (6) (2010). The misconduct definition set out in the statute is exclusive, and “no other definition applies.” *Id.*, subd. 6(e) (2010).

“Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether a particular act constitutes employment misconduct is a question of law, which is reviewed de novo. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). But whether the employee committed the particular act is a question of fact. *Id.* This court reviews the ULJ’s factual findings “in the light most favorable to the decision” and defers to the ULJ’s credibility determinations. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Relator challenges the ULJ’s decision that she is ineligible for benefits. To support her challenge, relator’s brief contains a long list of purported discrepancies in the record, many of which are not relevant here. The remaining alleged discrepancies

challenge the ULJ's findings that relator left work at least 20 minutes early on February 2, and was untruthful to her supervisors the following day when confronted about her actions. Relator argues that these findings are not supported by the record.

Relator's argument is without merit. The record reflects that both Willers and Laher provided consistent and detailed testimony that relator left work about 20 minutes early on February 2, without permission. Willers and Laher also testified that when they confronted relator the next day, relator was dishonest about her actions. If believed, Willers and Laher's testimony supports the ULJ's findings. Although relator testified that she left work only five minutes early and that she was forthright about her actions to her supervisors, the ULJ did not find her testimony to be credible. Instead, the ULJ specifically found Willers's and Laher's testimony to be "detailed, logical[,] and more credible." It is well settled that this court defers to the ULJ's credibility determinations. *See Skarhus*, 721 N.W.2d at 344. Accordingly, the ULJ's findings that relator left work 20 minutes early, without permission, and later provided "untruthful statements" about her actions is supported by the record.

Relator also argues that her conduct does not constitute employment misconduct. We disagree. "This court has recognized the employer's right to establish and enforce reasonable work rules relating to absenteeism." *Jones v. Rosemount, Inc.*, 361 N.W.2d 118, 120 (Minn. App. 1985). "Refusing to abide by an employer's reasonable policies generally constitutes disqualifying employment misconduct." *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 28 (Minn. App. 2007). "Even a single incident can be misconduct if it represents a sufficient enough disregard for the employer's

expectations.” *Blau v. Masters Rest. Assocs., Inc.*, 345 N.W.2d 791, 794 (Minn. App. 1984); *see also Moeller v. Minn. Dep’t of Transp.*, 281 N.W.2d 879, 882 (Minn. 1979) (holding that, even though the employee was legitimately ill, failure to report to work without notifying the employer constituted misconduct). And “[d]ishonesty that is connected with employment may constitute misconduct.” *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305, 307-08 (Minn. App. 1994).

Here, CEAP’s policy required two employees to be onsite at all times. Employees are also instructed to call Willers if the employee is going to late or needs to leave early so that Willers can fill the vacancy. The policy is in place because the food shelf is in an isolated location. The record reflects that relator violated this reasonable policy when she left work early on February 2, leaving her coworker alone at the food shelf. The record also reflects that after relator left, Burt became scared and went to her car. The record further reflects that relator was untruthful regarding her actions when confronted by her supervisors the next day. Relator’s actions violate the standards of behavior CEAP had a right to reasonably expect of its employees. Accordingly, the ULJ properly concluded that relator was discharged for employment misconduct.

Affirmed.