**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A07-39**

C. Keith McGruder,
Relator,

vs.

Affiliated Group Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 8, 2008**
**Affirmed**
**Willis, Judge**

Department of Employment and Economic Development
File No. 11613 06

C. Keith McGruder, 2703 55th Street Northwest, Rochester, MN 55901-4198 (pro se relator)

Affiliated Group Inc., 316 First Avenue Southwest, Rochester, MN 55902-3314 (respondent)

Lee B. Nelson, Katrina I. Gulstad, Department of Employment and Economic Development, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101-1351 (for respondent Department)

Considered and decided by Willis, Presiding Judge; Wright, Judge; and Poritsky, 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

**WILLIS,** Judge

By writ of certiorari, pro se relator challenges the decision of an unemployment-law judge (ULJ) that relator was discharged for employment misconduct and is, therefore, disqualified from receiving unemployment benefits. Because the ULJ's decision is supported by substantial evidence and is not affected by an error of law, we affirm.

## FACTS

Relator C. Keith McGruder worked at respondent Affiliated Group Inc., a collection agency, from August 15, 2005, to June 20, 2006. On numerous occasions during that employment, McGruder either left work early, was late to work, or was absent from work, for a variety of reasons, including illness. Affiliated had an unwritten policy that, before returning to work, an employee who had been absent from work for three days or more due to illness must provide a letter from a doctor verifying that the employee was healthy enough to return.

McGruder called in sick on June 12, 13, and 14, 2006, because of an intestinal illness. On June 13, McGruder asked his chiropractor to provide him with a written statement verifying the illness; the chiropractor refused. On the third day that McGruder called in sick, the director of collections, Monica Lewis, told him that before he could return to work, he must provide Affiliated with a letter from a doctor verifying that he was well enough to return. McGruder told Lewis that he could not afford to go to a private doctor but that he was trying to obtain a written statement from his chiropractor

and that he also was trying to see a doctor at a free clinic. Lewis told McGruder that any written statement would do, including one from the chiropractor or a doctor at a free clinic.

McGruder returned to work on June 15 without providing Affiliated with the requested verification that he was well enough to return. Lewis learned of this on June 16 and told a supervisor to make certain that McGruder provided the verification before allowing him to start work the next day. When McGruder arrived for work the next day, he had no doctor's letter, and, as a result, he was sent home.

On June 19, McGruder called Lewis and told her that he was unable to get a letter from a doctor. Lewis warned McGruder that he would not otherwise be allowed to return to work. McGruder called Affiliated on June 20 and again was reminded that he would need to provide verification of his fitness to return to work.

Affiliated ultimately discharged McGruder because of his failure to comply with its request. An adjudicator from respondent Minnesota Department of Employment and Economic Development determined that McGruder had been discharged for employment misconduct and that he was disqualified from receiving unemployment benefits. An ULJ affirmed that determination, McGruder filed a request for reconsideration, and the ULJ affirmed her earlier findings of fact and decision. McGruder now appeals.

## D E C I S I O N

This court may affirm the ULJ's decision, remand it for further proceedings, or reverse or modify it if the relator's substantial rights "may have been prejudiced because the findings, inferences, conclusion or decision are . . . affected by . . . error of law" or

"unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d) (Supp. 2005).

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). The determination that 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). Factual findings are reviewed in the light most favorable to the ULJ's decision, and this court gives deference to the ULJ's credibility determinations. *Id.* This court will not disturb a ULJ's factual findings as long as there is record evidence that reasonably tends to sustain them. *Schmidgall*, 644 N.W.2d at 804. But whether a particular act by an employee constitutes misconduct is a question of law reviewed de novo. *Id.*

An employee who is discharged for employment misconduct is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (Supp. 2005). Employment misconduct is "any intentional, negligent, or indifferent conduct, on the job or off the job (1) that displays clearly a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee, or (2) that displays clearly a substantial lack of concern for the employment." *Id.*, subd. 6(a) (2004). But absence from work "because of illness or injury with proper notice to the employer" is not employment misconduct. *Id.*

The ULJ determined that McGruder committed employment misconduct when he failed to comply with Affiliated's reasonable request that he obtain written verification from a doctor that he was well enough to return to work. An employer has the right to

expect that its employees will obey reasonable requests. *Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 206 (Minn. App. 2004), *review denied* (Minn. Mar. 30, 2004). If an employer makes a request that is "reasonable and does not impose an unreasonable burden on the employee, the employee's refusal to abide by the request constitutes misconduct." *Id.*

McGruder argues that he did not commit employment misconduct because, he claims, Affiliated did not have a written or oral policy that required that, after being absent from work for three days or more because of illness, he obtain a letter from a doctor verifying that he was well enough to return. He contends that the employee of Affiliated who testified that Affiliated had such a policy "made this up in [her] testimony." But the ULJ's determination of employment misconduct was not based on McGruder's failure to follow a policy; it was based on McGruder's failure to comply with Affiliated's reasonable request.

Although it is not altogether clear from his brief, McGruder seems to argue next that his failure to comply with Affiliated's request was not employment misconduct because he acted reasonably and tried to comply with the request. But the ULJ expressly rejected this claim, finding that McGruder failed to show that he (1) "made a good faith effort" to comply with Affiliated's reasonable request, (2) physically went to any hospital or clinic, (3) attempted to obtain medical treatment at a reduced cost, or (4) was turned away from a hospital or clinic because of a lack of funds. This court defers to the ULJ's ability to weigh the evidence and does not weigh evidence on review. *See Vargas*, 673

N.W.2d at 205. McGruder's claim that he acted reasonably and tried to comply with Affiliated's request is without merit.

McGruder argues also that his failure to provide a doctor's letter is not employment misconduct as a matter of law. In support of his argument, he cites an unpublished opinion of this court.[1] *See Davis v. Rainbow Foods*, No. A05-577, 2006 WL 463783 (Minn. App. Feb. 28, 2006). In *Davis*, this court held that a letter from a doctor is not required under Minn. Stat. § 268.095, subd. 6(a), to give proper notice to an employer of an absence due to illness. *Id.* at *2. Accordingly, we reversed a ULJ's determination that an employee committed employment misconduct by failing to provide a doctor's letter corroborating the reason for an absence. *Id.* But unlike the determination in *Davis*, the ULJ's decision here was based on McGruder's failure to comply with Affiliated's reasonable request that he obtain verification that he was well enough to return to work. *Davis*, therefore, is inapposite and unpersuasive.

Lastly, McGruder argues that the ULJ omitted evidence that showed that he was a "good employee." As the ULJ correctly noted, because McGruder was not discharged for poor job performance, any evidence tending to show that McGruder was a good employee is irrelevant to the issue here.

An employer has the right to expect that its employees will obey reasonable requests. *Vargas*, 673 N.W.2d at 206. Lewis testified that the reason Affiliated requested that McGruder provide a letter from a doctor was to ensure that he would not

[1] Unpublished opinions of this court are not precedential. Minn. Stat. § 480A.08, subd. 3(c) (2006).

spread illness to other employees. Affiliated's request was reasonable. Because McGruder failed to comply with Affiliated's reasonable request, we affirm the ULJ's determination that McGruder is disqualified from receiving unemployment benefits because of employment misconduct.

**Affirmed.**