

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-450**

Anna M. Ripka,
Relator,

vs.

West Publishing Corp.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 20, 2008
Affirmed
Willis, Judge**

Department of Employment and Economic Development
File No. 16580 06

Anna M. Ripka, 770 Lefferts Avenue, #A4L, Brooklyn, NY 11203 (pro se relator)

West Publishing Corp., P.O. Box 64526, Saint Paul, MN 55164-0526 (respondent)

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

Considered and decided by Shumaker, Presiding Judge; Willis, 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.

UNPUBLISHED OPINION

WILLIS, Judge

Relator appeals from her disqualification from receiving unemployment benefits, arguing that the unemployment-law judge's determination that she was discharged for employment misconduct was not supported by substantial evidence. We affirm.

FACTS

Pro se relator Anna M. Ripka worked full time for West Publishing Corporation as an "outbound inside sales representative" from August 2005 until October 11, 2006. In this capacity, she called current and former customers in attempt to sell West products. Ripka's position also required her to call customers and tell them when product updates were available and to ask if she could have an update shipped. West has a written, "zero-tolerance" policy that prohibits its sales representatives from "shipping products to customers without customer approval," and to cause a product to be shipped without such approval is a ground for termination.

In early October 2006, Ripka's manager, Alison Rongitsch, received a monthly report on products that certain of Ripka's customers had returned during September 2006. Although return rates of 10-15% were considered normal, the report showed a spike in Ripka's September returns "in excess of 20%." Also, some of Ripka's customers complained that they received product updates that they had specifically told her not to send. As a result of the report and the customer complaints, Rongitsch met with Ripka and played the tape recording of a call in which Ripka used a misleading tactic in an attempt to get the customer to agree to receive an updated product. After this meeting,

Rongitsch reviewed Ripka's calls from August through October and found five calls that resulted in Ripka causing products to be shipped without customer approval. Rongitsch asked two other supervisory employees to listen to the calls. All three agreed that Ripka had violated the company's policy, and she was subsequently discharged.

After a hearing in December 2006, an unemployment-law judge (ULJ) determined that West had discharged Ripka for employment misconduct, as defined in Minn. Stat. § 268.095, subd. 6(a) (2006), and is therefore disqualified from receiving unemployment benefits. Ripka requested reconsideration, the ULJ affirmed her decision, and this certiorari appeal follows.

D E C I S I O N

Ripka contends that the ULJ's decision to disqualify her from receiving unemployment benefits was not supported by substantial evidence because West claimed that she "shipped product out without proper consent, yet they did not furnish any proof of this" and because she was "doing my job exactly as I was trained." We disagree.

A person who is discharged from employment because of "employment misconduct" is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2006). "Employment misconduct" is defined as

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) (2006). Failure to comply with an employer's policy or rules can constitute misconduct. *See Bray v. Dogs & Cats Ltd.*, 679 N.W.2d 182, 184 (Minn. App.

2004) (“An employee can commit misconduct by refusing to comply with an employer’s reasonable requests and policies.”).

Whether an employee committed misconduct is a mixed question of fact and law. *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). Findings of fact are reviewed in the light most favorable to the ULJ’s decision, and deference is given to the ULJ’s determinations of credibility. *Id.* This court will not disturb the ULJ’s factual findings when those findings are supported by substantial evidence. *Id.*; *see also* Minn. Stat. § 268.105, subd. 7(d)(5) (2006). But whether an employee’s act is disqualifying misconduct is a question of law reviewed *de novo*. *Schmidgall*, 644 N.W.2d at 804.

Ripka argues first that West failed to produce any evidence that she actually “ship[ped] products without customer approval.” But the record supports the ULJ’s finding that Ripka violated West’s reasonable policy that products should not be shipped without customer approval. Rongitsch testified that she had found tape recordings of five phone calls that resulted in Ripka causing products to be shipped without customer approval. And two additional West witnesses “concurred with Rongitsch’s testimony.” The record also contains testimony that Ripka’s return rate in September 2006 was more than 20% and that some of Ripka’s customers had complained that they had received product updates that they had specifically told Ripka not to send. This evidence supports the ULJ’s determination that Ripka “blatantly violated [West’s] policy by shipping without [customer] approval.”

Ripka asserts next that West was required to produce at the hearing the tape recordings of her sales calls. But Ripka cites no authority for this proposition, and, in light of the other evidence in the record, including the testimony of West representatives, the record contains sufficient evidence to support the ULJ's determination of employment misconduct.

Finally, Ripka claims that she "was doing my job exactly as I was trained" and, therefore, should not have been fired for misconduct. The ULJ specifically addressed this argument and rejected it as lacking credibility. Ripka's argument on appeal, therefore, essentially challenges the ULJ's determination that Ripka's testimony was less credible than Rongitsch's. But credibility issues are resolved by the ULJ, and this court defers to the ULJ's credibility determinations. *Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006); *see also In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001) (stating that courts are to defer to an agency's conclusions regarding conflicts in testimony, weight to be given testimony, and inferences to be drawn from testimony). The ULJ explained the bases for her credibility determinations, and in light of those determinations, the record supports the ULJ's findings. *See* Minn. Stat. § 268.105, subd. 1(c) (2006) (stating that "[w]hen the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the [ULJ] must set out the reason for crediting or discrediting that testimony").

Because the record contains substantial evidence that Ripka shipped products to customers without their approval in violation of a reasonable policy of her employer, we

affirm the ULJ's decision that Ripka was discharged for employment misconduct and is therefore disqualified from receiving unemployment benefits.

Affirmed.