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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1032**

Elias A. Murdock,
Relator,

vs.

YWCA – St. Paul,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 17, 2008
Affirmed
Schellhas, Judge**

Department of Employment and Economic Development
File No. 1834 07

Elias A. Murdock, 704 West Maryland Avenue, St. Paul, MN 55117-4128 (pro se relator)

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Considered and decided by Shumaker, Presiding Judge; Hudson, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, 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 Elias A. Murdock worked for respondent YWCA–St. Paul from September 17, 2004 through November 10, 2006. He worked in various positions at the YWCA, including lifeguard, personal trainer, and personal-trainer supervisory positions. Relator's last position with the YWCA was part-time group fitness instructor. He taught periodic cardio-kickboxing classes at the YWCA facility. In the early fall of 2006, YWCA members began complaining to management that relator was bothering them by complaining about the YWCA and his dissatisfaction with his employment. In early October 2006, relator injured his knee. Both orally and in writing, the YWCA communicated to relator that he must not teach at the YWCA facility until he provided a doctor's note. The YWCA informed relator in writing that he additionally must not work out at the YWCA facility until he provided a note. Relator did not provide a doctor's note and continued to work out in the facility.

On November 9, 2006, while relator was at the facility, the YWCA delivered a second letter to him, instructing him not to work out or return to work without the

requested medical information. After receiving the letter, relator appeared to be sharing it with YWCA members at the facility. Pamela Carter, an executive assistant who oversaw human resources for the YWCA, approached relator and spoke to him about his sharing of the contents of the letter with YWCA members and about his working out in the facility. Carter told relator to leave the facility multiple times and he refused. After Carter walked away, relator began filling out an incident report, at which point William L. Collins, Jr., an executive director for the YWCA, approached relator and asked him to leave. Relator was finishing his incident report and refused to leave. After relator completed his incident report, Collins again asked him to leave and advised him that if he did not leave, the police would be called. Relator told Collins that he would leave but only because he had to pick up someone. In a letter mailed on November 10, 2006, the YWCA notified relator that his employment as a part-time group fitness instructor and his membership with the YWCA were terminated because of his failure to comply with the YWCA's requests.

Relator established a benefit account with respondent Minnesota Department of Employment and Economic Security (DEED). A DEED adjudicator determined that relator was not disqualified from receiving unemployment benefits, and the YWCA appealed. A ULJ held a telephone hearing in March 2007, and reversed the determination of the DEED adjudicator. The ULJ found that it was reasonable for the YWCA to expect that relator would refrain from working out at the facility until he obtained a doctor's note and that relator would leave the facility when asked, even during non-working hours. The ULJ concluded that relator was not qualified for unemployment

benefits because he had engaged in misconduct by failing to comply with the YWCA's requests. Relator filed a request for reconsideration, and the ULJ affirmed his earlier findings of fact and decision. Relator now brings a certiorari appeal.

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 a 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) (2006).

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. *Id.* 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) (2006). 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) (2006).

The ULJ determined that relator committed employment misconduct when he failed to comply with the YWCA’s reasonable request that he obtain written verification from a doctor that he was well enough to return to work and when he failed to obey his employer’s reasonable request to leave the YWCA facility. The ULJ found that relator’s actions displayed a serious violation of the standards of behavior an employer may reasonably expect. 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) (citing *McGowan v. Executive Exp. Transp. Enter., Inc.*, 420 N.W.2d 592, 596 (Minn. 1988)), *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.* The YWCA’s requests of relator were reasonable. By refusing to comply with these requests, relator committed misconduct.

Relator argues that a single incident of misconduct that does not have a significant adverse impact on the employer and demonstrates conduct an average employee would have engaged in under normal circumstances is not misconduct under Minn. Stat. § 268.095, subd. 6(a) (2006). He argues that his behavior on November 9, 2006, falls within this exception to misconduct. But the record demonstrates repeated refusals to comply with the YWCA’s requests over time, not a single incident of misconduct excepted by Minn. Stat. § 268.095, subd. 6(a). Relator also argues that the

real reason for his termination was retaliation for filing a discrimination charge. But, as correctly stated by the ULJ, the issue is whether relator's acts amounted to misconduct and because they do, relator's argument about retaliation is unavailing. Relator also argues that he was disadvantaged at the hearing because he received some of the evidence from the YWCA the morning of the hearing. But during the hearing, relator agreed to go forward and told the ULJ that he had already seen the documents contained in the YWCA's late submission. Finally, relator challenges a factual finding made by the ULJ: that a "heated" discussion took place. None of relator's arguments is persuasive.

Because relator refused to comply with the reasonable requests of the YWCA, we affirm the ULJ's determination that relator is disqualified from receiving unemployment benefits because of employment misconduct.

Affirmed.