

*This opinion will be unpublished and  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  
A07-1974**

Daniel J. Mammenga,  
Relator,

vs.

Rostad and Rostad Partnership,  
Respondent,

Department of Employment and  
Economic Development,  
Respondent.

**Filed August 12, 2008  
Affirmed  
Klaphake, Judge**

Department of Employment and Economic Development  
File No. 11514 07

Daniel J. Mammenga, 412 Paddington Road, Willernie, MN 55090 (pro se relator)

Rostad and Rostad Partnership, P.O. Box 470, Chisago City, MN 55013 (respondent)

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

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and  
Huspeni, Judge.\*

---

\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**KLAPHAKE**, Judge

Relator Daniel J. Mammenga challenges the decision of the unemployment law judge (ULJ) that he was disqualified from receiving benefits because he had been discharged for misconduct. Because the ULJ's decision is supported by substantial evidence in the record, we affirm.

### DECISION

An employee who is discharged for employment misconduct is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2006). "Employment misconduct" includes negligent or indifferent conduct on the job that clearly violates the standards of behavior an employer can reasonably expect from an employee or that clearly displays a substantial lack of concern for the employment. *Id.*, subd. 6(a) (2006). Misconduct does not include conduct that is merely inefficient, inadvertent, or unsatisfactory, or poor performance because of inability or incapacity. *Id.*

We review the ULJ's decision to determine if it is supported by substantial evidence in the record. Minn. Stat. § 268.105, subd. 7(d) (2006). The ULJ's findings are reviewed in a light most favorable to the decision and will not be disturbed if the evidence substantially sustains them. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). The question of whether the employee's act is misconduct is a question of law reviewed de novo by this court. *Id.* The reviewing court defers to the ULJ's credibility determinations. *Id.*

Relator was employed by respondent employer, Rostad and Rostad Partnership, as a janitor. The employer assigned relator to clean the business premises of certain of its clients. The ULJ found that relator damaged the walls at Polar Chevrolet while he was assigned to clean there because he was upset with his employer. As a result, the employer reassigned relator to the Kline Nissan and Kline Volvo dealerships. While working at these dealerships, the employer instructed relator on at least two occasions that he was not performing the tasks expected of him and that this conduct was the source of client complaints. After receiving more complaints, the employer inspected the Nissan dealership after relator cleaned and found deficiencies. Relator admitted that he had not performed the tasks he was required to do because he did not feel it was necessary. These facts are supported by substantial evidence in the record.

The ULJ concluded that relator's actions "showed a substantial lack of concern for the employment and displayed clearly a serious violation of the standards of behavior an employer has the right to reasonably expect of its employees," thus disqualifying him from receiving unemployment benefits. The ULJ made no credibility findings; relator admitted to causing the property damage and to his failure to perform tasks as requested by the employer.

As a general rule, an employee who refuses to abide by an employer's reasonable policies and requests commits disqualifying misconduct. *Schmidgall v. Filmtec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). This is particularly true when the employee has received repeated warnings or instructions regarding the unacceptable conduct. *Id.* at 805-06. Not every failure to follow directives will result in misconduct but the employee

may not disregard or ignore his or her duties, obligations, or the standards of behavior an employer reasonably expects. *Vargas v. Northwest Area Found.*, 673 N.W.2d 200, 206 (Minn. App. 2004), *review denied* (Minn. Mar. 30, 2004); *see also Monyoro v. Marriott Corp.*, 403 N.W.2d 325, 328 (Minn. App. 1987) (affirming disqualification from receiving benefits for repeated violation of work rules, despite seven warnings); *Montgomery v. F & M Marquette Nat'l Bank*, 384 N.W.2d 602, 604-05 (Minn. App. 1986) (affirming disqualification from receiving benefits after repeated refusal to follow rules and requests, evincing a deliberate disregard for employer's interests), *review denied* (Minn. June 13, 1986); *Campbell v. Minneapolis Star & Tribune Co.*, 345 N.W.2d 803, 804 (Minn. App. 1984) (affirming disqualification from receiving benefits after employee repeatedly failed to perform job responsibilities despite verbal and written reprimands).

Here, relator (1) damaged property at a client's dealership because he was angry with his employer; (2) was instructed in a detailed fashion about the tasks the employer expected him to accomplish; and (3) failed to complete those tasks, despite at least two formal written warnings. The employer's requests were reasonable and not beyond relator's ability. Relator's disregard for the employer's interests is evident; his conduct led to the employer losing one or more of its clients. Although relator argues that he did a better job than his predecessor, he admitted that he punched holes in the wall at one dealership and that he deliberately skipped some tasks, despite his employer's requests.

The ULJ's decision to disqualify relator from receiving benefits is supported by substantial evidence and is not erroneous.

**Affirmed.**