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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-537**

Jeffrey Williams,
Relator,

vs.

Roberts Residential Remodeling Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed February 2, 2010
Affirmed
Lansing, Judge**

Department of Employment and Economic Development
File No. 21256099-3

Jeffrey S. Williams, Burnsville, Minnesota (pro se relator)

Roberts Residential Remodeling Inc., Burnsville, Minnesota (respondent)

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

Considered and decided by Johnson, Presiding Judge; Lansing, Judge; and
Stoneburner, Judge.

UNPUBLISHED OPINION

LANSING, Judge

Jeffrey Williams appeals by writ of certiorari an unemployment-law judge's determination that he is ineligible for benefits because he was discharged for employment misconduct. Because the record provides substantial evidence of employment misconduct through Williams's unauthorized use of his employer's credit card for personal purchases, we affirm.

FACTS

Roberts Residential Remodeling Inc. (Roberts Residential) employed Jeffrey Williams as a carpenter from September 7, 2005 to September 16, 2008. Following the termination of his employment, Williams applied for unemployment benefits. The Minnesota Department of Employment and Economic Development determined that Williams was ineligible for benefits because he had been discharged for employment misconduct. Williams appealed, and an unemployment-law judge (ULJ) held an evidentiary hearing.

The company's owner, the company's administrator, and Williams testified at the hearing. The company's owner testified that he had promoted Williams in July 2007 to give him responsibility for obtaining job-related construction supplies using the company credit card; that beginning in February 2008 the company administrator noticed that Williams was making small personal purchases on the company credit card; that in March the administrator told Williams not to use the company card for these purchases; that Williams continued to make small personal charges on the card; that on September 2,

2008, Williams made a large company-credit-card purchase of building supplies for his own home; and that after the owner received proof that Williams's purchase was for purely personal purposes he discharged Williams. The company's administrator corroborated the owner's testimony about Williams's improper use of the company credit card.

In explaining the general policy on the use of the company credit card, the company's owner testified that the company requires employees to use their own tools, and consequently, the company will allow employees with preapproval to purchase job-related tools on the company card and pay for them in installments. Williams had previously purchased job-related tools on the company card. The owner also testified that he had job performance issues with Williams that he was addressing at the same time he learned of Williams's continuing personal purchases. On Williams's last day of employment, the owner issued a letter of termination stating that the unauthorized use of the company's credit card and his performance issues were the reasons for Williams's discharge.

Williams disputed that he had been told not to use the company credit card for personal purchases. But he testified that he had to designate a specific client account when making any purchase on the card, including his personal charges, and that he knew his personal purchases could cause accounting problems. Williams said that he had purchased snacks and soft drinks on the company card to avoid taking a lunch break because he believed the owner did not want the employees to break for lunch even though the company had instituted a policy that required employees to take a thirty-

minute lunch break. Williams acknowledged that he had previously asked for and received advance permission to purchase some tools but said that he had purchased other job-related tools without preapproval. Williams also acknowledged that he did not seek permission to use the company card to charge the building materials for his basement but said that he made the purchases for his basement on the weekend and could not contact a supervisor. It was established later in the hearing, however, that the purchases were made on a Tuesday.

The ULJ found that Williams's explanation for his snack and drink purchases was not credible and that he continued to make personal purchases, including a larger amount for building materials for his basement, after being warned not to use the company card for personal purposes. The ULJ concluded that these actions constituted employment misconduct that made Williams ineligible for unemployment benefits.

Williams filed a request for reconsideration, and the ULJ denied the request and affirmed the decision. The ULJ noted that Williams's assertion that he was permitted to make personal purchases so long as he reported them did not make sense "in light of the fact that all purchases were assigned to a client account." Williams appeals by writ of certiorari, arguing that he was discharged for refusing to sign a reprimand related to his job performance, not for misuse of the company credit card, and that he was never told he could not make personal purchases on the company card.

DECISION

I

We review a ULJ's decision to determine whether substantial rights were 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. Minn. Stat. § 268.105, subd. 7(d) (2008). We first address Williams's assertion that he was discharged for reasons other than his use of the company credit card. To disqualify a person from receiving benefits the misconduct must be the cause of the discharge. *See Harringer v. AA Portable Truck & Trailer Repair, Inc.*, 379 N.W.2d 222, 224 (Minn. App. 1985) (holding that poor performance, not misconduct, was the actual reason for termination and employee qualified for benefits).

The owner of Roberts Residential did not discharge Williams immediately after learning of Williams's building-materials purchase. Instead, the owner raised concurrent issues about Williams's job performance and issued a written reprimand based on job performance. Williams argues that his refusal to sign the reprimand was the real reason for his discharge. But the company owner explained at the evidentiary hearing that he was waiting to receive proof of the contents of Williams's building-materials purchase to confirm that it was purely personal, not a "side job" for one of his clients or in response to an emergency. Williams refused to sign the written reprimand during the same period of time that the company's owner received proof of Williams's most recent personal purchases and decided to discharge Williams. The owner prepared a letter of termination

on Williams's last day that reflected both the job-performance issues and the unauthorized use of the company credit card as the reasons for the discharge.

The ULJ found that Williams was warned about the improper use of the company credit card and, despite the warnings, continued to make purchases and was discharged for abusing his access to the company credit card. Williams had a full opportunity to present testimony and argue the reasons for his discharge. *See Lumpkin v. N. Cent. Airlines, Inc.*, 296 Minn. 456, 460-61, 209 N.W.2d 397, 400-01 (stating that reason for discharge, not collateral actions, determine whether employee disqualified from receiving benefits). The record supports the ULJ's finding that the pivotal reason for Williams's discharge was his improper use of the company credit card.

II

A discharge for employment misconduct results in ineligibility to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008). Having determined that the record supports the ULJ's finding that Williams was discharged because of his improper use of the company credit card for personal purchases, we now address whether this action constituted employment misconduct. A ULJ's conclusion that an employee's acts make him ineligible to receive unemployment benefits is a question of law that this court reviews de novo. *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006).

"Employment misconduct" is intentional, negligent, or indifferent conduct that clearly displays either "a serious violation of the standards of behavior the employer has the right to reasonably expect" or "a substantial lack of concern for the employment."

Minn. Stat. § 268.095, subd. 6(a) (2008). Employment misconduct includes “refusing to abide by an employer’s reasonable policies and requests.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). When an employee handles the employer’s money, the “employer has the right to expect [the employee’s] scrupulous adherence to procedures.” *McDonald v. PDQ*, 341 N.W.2d 892, 893 (Minn. App. 1984).

In his request for reconsideration and on appeal, Williams argued he was never told about the company’s policy limiting credit-card purchases. The company owner and company administrator provided testimony contradicting Williams’s denial of knowledge and warnings. The administrator specifically testified to the time at which Williams was told not to use the company’s credit card for personal purchases and testified who was present at the meeting when Williams was told about the policy. The ULJ resolved the conflicting testimony on notice of the company’s policy in favor of Roberts Residential, and the record supports the ULJ’s conclusion. *See Jenson v. Dep’t of Econ. Sec.*, 617 N.W.2d 627, 631 (Minn. App. 2000) (deferring to determination of witness credibility), *review denied* (Minn. Dec. 20, 2000). We agree, as a matter of law, that ignoring the company’s policy directive and continuing to make additional and larger personal purchases on the company credit card amounts to employment misconduct.

Furthermore, as the ULJ observed, even if Williams had not been explicitly warned about his use of the company credit card, he should have known that it was improper to use it for purely personal purchases. Every purchase had to be tied to a client account, which Williams knew because he had to provide the client account to complete the purchase. The tools that Williams had previously purchased with the card and paid

for in installments were tools that he needed for specific client projects. Williams's purchase of building materials for his basement had no connection to his employment and was not made in conjunction with a purchase for a client. In the denial of reconsideration, the ULJ further observed that it makes little sense to suggest that Roberts Residential would pay for snacks purchased by its employees to avoid taking the lunch break mandated by the company. It would be equally unusual for an employer to make its credit card available for any and all purchases by an employee so long as the employee informed the employer after the fact. Because it is reasonable for an employer to restrict the use of its company credit card to work-related purchases and the record indicates that Williams knew that the card was not for personal use, the ULJ did not err in concluding that Williams's unauthorized purchases constituted employment misconduct, which makes Williams ineligible for unemployment benefits.

Affirmed.