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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-671**

Jacinda Crews,
Respondent,

vs.

Edgewater Management LLC,
Relator,
Department of Employment and Economic Development,
Respondent.

**Filed January 19, 2010
Reversed
Stauber, Judge**

Department of Employment and Economic Development
File No. 21128935-6.

Jacinda Crews (pro se respondent)

R. Thomas Torgerson, Scott A. Witty, Hanft Fride, P.A., Duluth, Minnesota (for relator)

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

Considered and decided by Minge, Presiding Judge; Schellhas, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

Relator employer challenges the decision by the unemployment-law judge that respondent employee was eligible to receive unemployment benefits because her failure to meet with her supervisor on several occasions did not constitute employment misconduct. We reverse.

FACTS

Respondent Jacinda Crews was employed as the general manager of relator Edgewater Management LLC (Edgewater) d/b/a the Hampton Inn & Suites in Bemidji, Minnesota from October 6, 2006 to July 28, 2008. Crews was responsible for overseeing hotel operations and reported to Richard Siegert, the owner of Edgewater. Crews set her own work hours and her schedule often fluctuated depending on the needs of the hotel.

During June and July 2008, Siegert e-mailed Crews several times to schedule meetings to discuss hotel operations. Siegert's initial e-mail messages in June identified problems with the hotel budget and suggested that the problems were "urgen[t]" and required attention "ASAP." Crews responded to some of the requests via e-mail, indicating that she was either "unavailable" or too busy with other work priorities.

Siegert grew frustrated by Crews's inability to meet. On the morning of July 28, 2008, he stopped by Crews's office and demanded an immediate meeting. Crews refused to meet with Siegert because she was in a meeting with a hotel staff member at the time, had two additional meetings with hotel customers scheduled for the morning, and planned to leave at noon to take her child to an appointment. Siegert told Crews that he

would wait in the lobby while she finished her current meeting, but after waiting for some time he eventually left. Later that day, Siegert discharged Crews for failing to comply with his order to meet.

Crews subsequently applied for unemployment benefits with respondent Department of Employment and Economic Development (DEED). A DEED adjudicator determined that Crews was ineligible for unemployment benefits because her refusal to meet with Siegert constituted employment misconduct. Crews appealed the decision and a de novo evidentiary hearing was held before an unemployment-law judge (ULJ).

After the hearing, the ULJ found that Crews was entitled to unemployment benefits because her failure to meet with Siegert did not constitute employment misconduct. Edgewater filed a request for reconsideration, and the ULJ affirmed the determination of eligibility. This certiorari appeal followed.

D E C I S I O N

This court may reverse or modify the decision of a ULJ if the substantial rights of the petitioner may have been prejudiced because the ULJ's findings, inferences, conclusions, or decisions are affected by error of law or unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2008).

Edgewater argues that the ULJ erred in concluding that Crews is eligible for unemployment benefits because her failure to meet with Siegert constituted employment misconduct. An employee discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008). 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) (2008).

“Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether an employee committed the alleged act is a fact question. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). This court defers to the ULJ’s credibility determinations and findings of fact. *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007). But “[w]hether a particular act constitutes employment misconduct is a question of law, which this court reviews de novo.” *Schmidgall*, 644 N.W.2d at 804.

In determining that Crews’s failure to meet with Siegert did not constitute employment misconduct, the ULJ emphasized that “the tone of [Siegert’s] e-mails did not suggest that there was any particular urgency or that Crews’[s] job might be placed in jeopardy if she did not meet with Siegert by a specific date.” The ULJ also determined that the refusal to meet on the date of her discharge was reasonable because “Crews was busy that day” and “[t]here [was] no evidence that Siegert needed to address any urgent topic with Crews” at the time.

We disagree with the ULJ’s determination. Contrary to the ULJ’s conclusions, Siegert’s e-mails indicated that the hotel was having “urgen[t]” budget problems that required attention “ASAP.” Thus, Crews knew that it was imperative that she meet with Siegert. Despite repeated requests to meet to discuss those issues, Crews failed to

accommodate Siegert's requests for at least two months. Crews's failure to accommodate the meeting requests constituted employment misconduct because an employer has the right to expect that an employee will comply with the employer's reasonable requests. *See Schmidgall*, 644 N.W.2d at 804 (stating that failure to abide by an employer's reasonable requests amounts to employment misconduct). Crews's deliberate refusal to meet with Siegert on the date of her discharge also rendered her ineligible for unemployment benefits because it was a blatant act of insubordination that clearly displayed a substantial lack of concern for her employment. *See Minn. Stat. § 268.095, subd. 6(a); see also Daniels v. Gnan Trucking*, 352 N.W.2d 815, 816-17 (Minn. App. 1984) (holding that an employee's refusal to unload cargo when employer required it was a single, deliberate act of insubordination and, therefore, was employment misconduct). Crews did have other work obligations that day and would have had to adjust her schedule to meet with Siegert. But Siegert's reasonable demands, as the owner of Edgewater, took precedence over any other commitments Crews might have had to staff members or customers. Moreover, the demand should not have come as a surprise to Crews because Siegert had been requesting to meet for at least two months. Accordingly, we reverse the ULJ's determination of eligibility.

Reversed.