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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1408**

Richard Darland,
Relator,

vs.

GTG Trucking Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 6, 2010
Affirmed
Larkin, Judge**

Department of Employment and Economic Development
File No. 22257027-3

Richard D. Darland, Minneapolis, Minnesota (pro se relator)

GTG Trucking Inc., North Branch, Minnesota (respondent)

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

Considered and decided by Larkin, Presiding Judge; Wright, Judge; and Worke,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Relator challenges a determination that he is ineligible to receive unemployment benefits. Because relator was discharged for employment misconduct, we affirm.

DECISION

Relator Richard Darland began working as a truck driver for GTG Trucking Inc. in June 2007. In March 2009, Darland was discharged from employment for driving out of route, communicating directly with brokers, and refusing to wait for loads.

Darland established a benefit account with the Department of Employment and Economic Development (DEED) and applied for unemployment benefits. DEED determined that Darland was eligible to receive unemployment benefits. GTG Trucking appealed this decision, and an evidentiary hearing was held. An unemployment-law judge (ULJ) found that Darland was ineligible to receive unemployment benefits because he was discharged for employment misconduct, to wit: demonstrating “a pattern of insubordinate behavior and disregard of management directions and instructions.” Darland requested reconsideration, and the ULJ affirmed her decision. This certiorari appeal follows.

Our review of a ULJ’s eligibility determination is governed by Minn. Stat. § 268.105, subd. 7(d) (2008), which provides:

The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have

been prejudiced because the findings, inferences, conclusion, or decision are:

- (1) in violation of constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the department;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.

An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008). Employment misconduct means “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). The misconduct definitions set out in the act are exclusive and “no other definition applies.” *Id.*, subd. 6(e) (2008).

Whether an employee committed employment misconduct is a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether a particular act constitutes employment misconduct is a question of law, which an appellate court reviews de novo. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). Whether the employee committed the particular act, however, is a question of fact. *Id.* This court reviews the ULJ’s factual findings “in the light most favorable to the decision.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Numerous incidents led to Darland's discharge. An applicant's behavior "may be considered as a whole in determining the propriety of [his] discharge and [his] qualification for unemployment compensation benefits." *Drellack v. Inter-County Comm. Council, Inc.*, 366 N.W.2d 671, 674 (Minn. App. 1985). "As a general rule, refusing to abide by an employer's reasonable policies and requests amounts to disqualifying misconduct." *Schmidgall*, 644 N.W.2d at 804.

Substantial evidence in the record supports the ULJ's factual findings regarding employment misconduct. The evidence shows that Darland disregarded GTG Trucking's instructions to take the shortest, most direct route to his final destinations. For example, on January 30, 2009, Darland refused to follow designated routes to avoid tolls. On February 4, Darland drove 60 miles out of route, without authorization, to go to a truck stop with "restaurant" food. On March 4, Darland drove 106.8 miles out of route in order to spend the night at a truck stop with an attached restaurant. Another truck stop was located along the route to delivery, but it did not have an attached restaurant, and Darland was unwilling to eat at a fast-food restaurant.

Darland also disregarded GTG Trucking's instructions not to communicate directly with brokers. On February 25, 2009, Darland, without authorization, notified a broker that he did not have enough time to deliver a load. GTG Trucking had instructed drivers several months earlier not to contact brokers directly regarding delays or failure to make a timely delivery. On March 17, Darland, without authorization, changed the delivery time of his load.

Darland twice left a client site when he had been instructed by the dispatcher to wait for another load. On February 12, the dispatcher told Darland to wait at a client site because he might be able to get a new load before the weekend. After waiting for several hours, Darland left and drove to a truck stop. Darland returned to the site later that day. On March 23, the dispatcher directed Darland to wait at a client site for additional product to load. He waited for two and a half hours. Darland complained about waiting so long, told the dispatcher that he was leaving, and directed the dispatcher to contact him if the dispatcher found another load.

The evidence also shows that Darland refused to carry a load that was not going directly to Minnesota, threatened to abandon his truck, carried a passenger without the necessary insurance, and made negative comments about his employer. Darland was warned that his conduct could result in discharge, yet he continued to engage in the same behaviors. As stated by the ULJ: “It was the totality of the incidents that led to a finding of employment misconduct.” Darland’s behavior clearly displayed a serious violation of the standards of behavior that GTG Trucking had the right to reasonably expect, and it constituted employment misconduct. *See* Minn. Stat. § 268.095, subd. 6(a) (defining employment misconduct to include conduct “that displays clearly a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee”).

In his brief, Darland presents three primary arguments regarding why his behavior did not constitute employment misconduct. First, Darland insists that it was not his fault that he delivered a load late on February 28 because his truck was making unusual noises

and, as it is his responsibility to make sure his equipment is safe, he did not feel comfortable driving it. The ULJ did not address this incident in her findings or order. Because the ULJ did not rely on this occurrence in determining that Darland had committed employment misconduct, the reasoning behind Darland's tardiness on February 28 is irrelevant.

Darland next argues that he was terminated because, on March 23, he refused to accept a load in excess of 80,000 pounds. Darland made this argument at the evidentiary hearing, and the ULJ explicitly found his testimony not to be credible. "Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus*, 721 N.W.2d at 345.

Lastly, Darland argues that he was allowed to drive 10% out of route. There is no evidence in the record to support this contention,¹ and in any event, the record does not demonstrate that Darland's out-of-route deviations were within the parameters of this exception. Darland further asserts that "there are other drivers that were out of route and they are still employed with GTG." "Violation of an employer's rules by other employees is not a valid defense to a claim of misconduct." *Dean v. Allied Aviation*

¹ Darland does present a document that states: "Great Job! This last week everyone achieved under the 10% out of route miles, let's keep up the good work!" It appears, however, that this document was first submitted along with Darland's request for reconsideration of the ULJ's initial decision. Minn. Stat. § 268.105, subd. 2(c) (2008) states: "In deciding a request for reconsideration, the [ULJ] must not, except for purposes of determining whether to order an additional evidentiary hearing, consider any evidence that was not submitted at the evidentiary hearing conducted under subdivision 1." The ULJ found that this evidence would not change the outcome of the decision and therefore did not order an additional hearing. Darland does not argue that the ULJ abused her discretion by failing to conduct another evidentiary hearing.

Fueling Co., 381 N.W.2d 80, 83 (Minn. App. 1986). Furthermore, even if we assume that Darland was authorized to go out of route, he engaged in additional behavior that supported a finding of misconduct including speaking directly with brokers, not waiting at a client site when he had been asked to do so by dispatch, threatening to leave his truck, and carrying a passenger without insurance. Because the ULJ did not err by concluding that Darland was discharged for employment misconduct and therefore ineligible to receive unemployment benefits, we affirm.

Affirmed.

Dated:

Judge Michelle A. Larkin