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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-40**

Cheryl Schaeffer,
Relator,

vs.

Mentor Management Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed September 14, 2010
Affirmed
Schellhas, Judge**

Department of Employment and Economic Development
Agency File No. 23407143-3

Cheryl Schaeffer, Rochester, Minnesota (pro se relator)

Mentor Management Inc., St. Louis, Missouri (respondent)

Lee B. Nelson, Britt K. Lindsay-Waterman, Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent Department of Employment and
Economic Development)

Considered and decided by Toussaint, Chief Judge; Schellhas, Judge; and
Muehlberg, Judge.*

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

In this certiorari appeal, relator challenges the decision of the unemployment-law judge (ULJ) that she is ineligible for benefits because she was discharged from employment for misconduct. We affirm.

FACTS

Relator Cheryl Schaeffer worked as a direct-service professional in a residential facility for vulnerable adults (“residents”) who suffer from mental illness. Each resident has an individual service plan (ISP), which contains provisions to ensure the resident’s safety, and which staff members must read within 72 hours of their arrival at a facility to work.

On June 22, 2009, relator took four residents to a community festival but left early to take one of the residents home, leaving the other three residents unsupervised. One of the three residents left unsupervised had an ISP that provided that she was not to be left unsupervised in the community. As a result of this incident, the employer gave relator a final written warning, advising her that in the future she was to implement all residents’ ISPs as written, follow all policies, contact a supervisor if she had questions, and that failure to comply could result in her discharge.

On August 30, 2009, relator took a resident to church and left him there alone for an hour, despite the provision in his ISP that he, too, was not to be left unsupervised. On August 31, 2009, the incident was reported to the employer, who discharged relator.

Relator applied for unemployment benefits and, after receiving a determination of ineligibility, appealed to a ULJ. After a hearing, the ULJ ruled that relator was discharged for misconduct and ineligible for unemployment benefits. Relator requested reconsideration, and the ULJ affirmed. This certiorari appeal follows.

D E C I S I O N

On certiorari appeal, this court reviews the ULJ's decision to determine if the substantial rights of the relator may have been prejudiced because the findings, conclusion, or decision are made upon unlawful procedure, affected by error of law, or unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d)(3)–(5) (2008). Relator argues that the hearing before the ULJ was unfair and that her actions did not constitute misconduct.

Fairness of Hearing

The ULJ conducts the hearing “as an evidence gathering inquiry” and “must ensure that all relevant facts are clearly and fully developed.” Minn. Stat. § 268.105, subd. 1(b) (Supp. 2009). “The judge must exercise control over the hearing procedure in a manner that protects the parties’ rights to a fair hearing.” Minn. R. 3310.2921 (2009).

Relator first contends that she was unprepared for the hearing because she received the employer's documents the night before the hearing. As the ULJ ruled on reconsideration, relator did not tell the ULJ at the hearing that she was unprepared to participate and, further, the ULJ neither received those documents into evidence nor relied on them in reaching a decision. Relator also argues that she felt nervous and intimidated during the hearing. A review of the transcript shows that throughout the

hearing, the ULJ specifically asked relator if there was anything additional she wished to say or if she had questions for the witnesses and questioned her in detail to obtain her version of the events. Relator also contends that the ULJ did not give her the opportunity to finish her closing statement because when she paused, he abruptly ended the hearing without asking her if she was done. But the record reflects that relator's closing statement was uninterrupted, and relator did not ask the ULJ for more time and does not explain what else she would have said. Relator has not demonstrated any prejudicial flaws and, instead, the record shows that the ULJ conducted a fair hearing.

Employment Misconduct

Relator challenges the misconduct determination. "Employment misconduct means any intentional, negligent, or indifferent conduct, on the job or off the job that displays clearly . . . a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee." Minn. Stat. § 268.095, subd. 6(a)(1) (Supp. 2009). "As a general rule, refusing to abide by an employer's reasonable policies and requests amounts to disqualifying misconduct." *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). An employee who is discharged for misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008).

Relator contends that she did not engage in misconduct when she left the resident at church unsupervised, arguing that she was merely following her supervisor's written order to take him to church; that she did not have access to the resident's ISP; that the facility was inadequately staffed; and that she did not intend to do anything wrong. But as the ULJ ruled, an employer has "the right to expect strict adherence to policy by

individuals working in a healthcare setting where policy violations may result in harm to the patients or residents.” See *Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 525 (Minn. 1989) (noting need for strict compliance with protocol in medical field). In relator’s final warning, the employer specifically told her that in the future she was to implement all residents’ ISPs as written and follow all policies and that if she had questions, she should contact a supervisor, but she again failed to do so. While relator argues that she did not intend to do anything wrong by leaving the resident unsupervised, the statutory definition of misconduct encompasses negligent or indifferent conduct, in addition to intentional conduct. Minn. Stat. § 268.095, subd. 6(a) (Supp. 2009). Even if relator’s conduct was unintentional, she was negligent or indifferent toward her employer’s policy and instruction that she must implement all residents’ ISPs as written and follow all policies.

In conclusion, the ULJ’s decision that relator was discharged for employment misconduct and ineligible for unemployment benefits is supported by substantial evidence in the record and reflects a correct application of law.

Affirmed.