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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-148**

James Washleski,
Relator,

vs.

Construction Results Corporation,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed September 7, 2010
Affirmed
Toussaint, Chief Judge**

Department of Employment and Economic Development
File No. 22097719-3

James Washleski, Watertown, Minnesota (pro se relator)

Construction Results Corporation, Plymouth, Minnesota (respondent)

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

Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and Harten,
Judge.*

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

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Relator James Washleski challenges the determination of the unemployment-law judge (ULJ) that Washleski committed aggravated employment misconduct and that he was ineligible for benefits. Because the ULJ's findings are supported by substantial evidence and the decision is a correct application of the law, we affirm.

DECISION

“Whether the employee committed an act alleged to be employment misconduct is a fact question, but the interpretation of whether that act is employment misconduct is an issue of law.” *Risk v. Eastside Beverage*, 664 N.W.2d 16, 19-20 (Minn. App. 2003). This court reviews a question of law de novo. *See id.* at 20. “Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006).

Washleski worked as an estimator and project manager for respondent Construction Results Corporation. Washleski earned a \$76,000 annual salary and in addition received an annual bonus calculated as 15% of the amount of profit above \$150,000 on projects to which he was assigned. One of Washleski's job duties was to fill out job cost reports to predict profits or losses on construction jobs. Project managers fill out the job cost reports quarterly for “active” jobs that are still in progress. Job cost reports for all jobs, active and completed, are submitted on November 30 each year for purposes of calculating the annual bonus. Washleski's November 30 job cost reports inflated the expected profit for three jobs, which resulted in Washleski receiving a bonus

to which he was not entitled. On the first job in dispute, Washleski reported that the job would make a profit of approximately \$42,000, but the actual profit was approximately \$8,700. On the second job in dispute, Washleski reported that the job would make a profit of approximately \$64,347, but the actual profit was \$33,659. On the third job in dispute, Washleski reported that the job would make a profit of approximately \$170,000, but the actual profit was \$87,084. Washleski had never before made an error of more than a couple thousand dollars in estimating profits. Washleski's estimated profits on the three disputed job-cost reports resulted in his receiving an annual bonus of \$14,900. Had Washleski's job-cost reports been accurate, he would not have received an annual bonus. After learning of this, Washleski's employer discharged him.

Washleski applied for unemployment benefits, stating that he was never told of the allegations by Construction Results; the job-cost reports were for bonding purposes only and did not need to be exact; the figures were given to him by the accountant; and bonuses were paid on completed jobs and that the disputed projects were not completed. Washleski was initially determined to be eligible for unemployment benefits because Construction Results never provided evidence to support the allegations it made against him.

Construction Results challenged the determination that Washleski was eligible for unemployment benefits. Both Washleski and his supervisor, president of Construction Results, participated in the telephone hearing.

Based on this testimony and evidence, the ULJ found that Washleski had been paid a bonus of \$14,900 that he was not entitled to receive based on his "falsification of

job costs reports he submitted” and concluded that he committed employment misconduct by submitting the falsified reports. *See* Minn. Stat. § 268.095, subd. 6(a) (2008) (defining misconduct as intentional, negligent, or indifferent conduct “that displays clearly a serious violation of the standards of behavior the employer has the right to reasonably expect”); *McKee v. Cub Foods, Inc.*, 380 N.W.2d 233, 236 (Minn. App. 1986) (concluding that submitting false information on timecard was misconduct). The ULJ also concluded that taking more than \$1,000 belonging to Construction Results “constituted theft by swindle in excess of \$1,000 which constitutes a [f]elony and aggravated employment misconduct.” *See* Minn. Stat. § 268.095, subd. 6a(a)(1) (2008) (defining aggravated misconduct as any act “that would amount to a gross misdemeanor or felony if the act . . . had a significant adverse effect on the employment”); Minn. Stat. § 609.52, subd. 3(4) (2008) (providing sentence of imprisonment of not more than one year or payment of fine of not more than \$3,000 or both for theft of more than \$500 but not more than \$1,000); Minn. Stat. § 609.02, subd. 4 (2008) (defining gross misdemeanor as crime that is not felony or misdemeanor, for which maximum fine is \$3,000).

Based on this misconduct finding, the ULJ determined that Washleski was ineligible for unemployment benefits. Washleski requested reconsideration on the ground that the ULJ’s factual findings were erroneous but offered no new evidence. Instead, Washleski stated that he would request “supporting documentation . . . later in this appeal” and would request that the court “order into evidence” supporting documents from Construction Results. The ULJ affirmed the decision.

The evidence establishes that Washleski received an annual bonus to which he was not entitled and that he wrongfully obtained \$14,900. Finding that his explanations lacked credibility, the ULJ found that Washleski intentionally deceived Construction Results by submitting falsified job-cost reports on which his annual bonus was based. The record before us establishes that the ULJ did not err by concluding that Washleski's conduct constitutes aggravated employment misconduct.

Affirmed.