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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-552**

Peter Rask,
Relator,

vs.

Illinois Central School Bus, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed November 2, 2010
Affirmed
Huspeni, Judge***

Department of Employment and Economic Development
File No. 23677381-3

Peter Rask, Bayport, Minnesota (pro se relator)

Illinois Central School Bus LLC, Mazon, Illinois (respondent)

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

Considered and decided by Toussaint, Presiding Judge; Ross, Judge; and Huspeni,
Judge.

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

UNPUBLISHED OPINION

HUSPENI, Judge

Relator Peter Rask challenges the decision of the unemployment law judge (ULJ) that relator is ineligible for benefits because he was discharged for misconduct. Because evidence substantially sustains the finding that relator used derogatory and inappropriate language in the workplace and because the use of such language is misconduct, we affirm.

FACTS

Relator worked as a head mechanic for respondent Illinois Central School Bus LLC from August 2008 until his discharge in October 2009. His corrective-action notice listed four reasons for his termination: “Falsification of employment Application. Failure to safeguard company assets. Discourteous treatment of fellow employees. Retaliation against a company employee.” Respondent informed the Minnesota Department of Employment and Economic Development (DEED) that relator was discharged for four reasons: “Theft, falsification of employment application. Discourteous treatment of fellow employees. Retaliation against company employee.”

Relator applied for unemployment benefits. DEED determined that relator was not eligible for benefits because he committed misconduct by “omit[ing] the fact that he had been convicted of a crime on his [job] application.” The notice of ineligibility did not address relator’s alleged theft or his behavior toward other employees. Relator appealed.

Following a telephone hearing, the ULJ concluded that relator had not committed misconduct either by falsifying his employment application or by theft of company property, but had committed misconduct in his behavior to other employees, had been discharged for that misconduct, and was ineligible for benefits. Relator's request for reconsideration was denied.

Relator challenges the determination that he is not eligible for benefits, arguing that he was discharged not for his treatment of co-workers but because of his alleged falsification of the employment application and his alleged theft and that he did not know the hearing would concern his treatment of co-workers.¹

D E C I S I O N

“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).

The ULJ concluded that “the preponderance of the evidence supports a finding that [relator] did use the derogatory names towards coworkers, including women.” The hearing transcript supports that conclusion. Five employees testified as to their experiences with relator.

(1) The contract manager said other employees had reported to him that relator called drivers, particularly female drivers, obscene names.

¹Relator's argument that he did not know the telephone hearing would involve his behavior to other employees is unpersuasive. He knew that one basis for his termination was “discourteous treatment of fellow employees,” and he had told DEED that he received a warning about his interactions with drivers.

(2) A female employee testified that

[Relator's] been very, very belligerent towards the drivers. . . . [H]e's come in screaming, hollering, swearing to the point that it's very distracting [T]he drivers . . . were afraid to bring their buses down to the shop to get repaired. . . . [O]fficers from the state . . . were witness to [relator] hollering and screaming and . . . swearing, the name-calling, very chauvinistic towards women.

(3) Another female employee testified that relator "would just come in and he would yell all the time. . . . [H]e didn't fill out a piece of paperwork properly . . . [a]nd he blew up at me and he told me to get the hell out of his office . . . very loudly."

(4) An employee who was in charge of the shop testified that relator

threw a metal folding chair at the back of the shop. It just missed [a mechanic's] head. . . . [H]e was upset because he wasn't put in charge. He took an oil dip stick out a bus, wound up and threw it at me. I was on the other side of the shop. It hit me in the leg and landed on the floor.

(5) Another employee testified about relator's "[i]diotic, loud screaming, singing to the point where you can't even hear. . . . Instead of speaking to anybody, he would yell at the top of his lungs"

Relator testified that his superiors had spoken to him concerning his treatment of other employees and that after they talked to him, he "corrected the situation." He denied ever calling anyone the obscene names mentioned by the contract manager. But "[c]redibility 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). The ULJ found the employees' testimony credible.

We agree with the ULJ's conclusions that relator's

yelling, use of inappropriate language, and use of derogatory terms towards coworkers, separately and together, were serious violations of the standards of behavior the employer had a right to reasonably expect of him, especially because [he] was a manager and because [he] had been warned on each issue. Further, [his] behavior displayed a substantial lack of concern for the employment.

See Minn. Stat. § 268.095, subd. 6 (Supp. 2009) (defining employment misconduct as a serious violation of the standard of behavior the employer has a right to reasonably expect of the employee or a substantial lack of concern for the employment).

Affirmed.