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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1445**

Chris Davis,
Relator,

vs.

World Aerospace Corporation,
Respondent,

Department of Employment and
Economic Development,
Respondent.

**Filed April 5, 2011
Affirmed
Klaphake, Judge**

Department of Employment and Economic Development
File No. 25105708-3

Chris J. Davis, Blaine, Minnesota (pro se relator)

World Aerospace Corporation, Maple Grove, 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 Larkin, Presiding Judge; Klaphake, Judge; and Minge,
Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

In this pro se unemployment compensation appeal, relator Chris Davis challenges his discharge for employment misconduct from respondent World Aerospace Corporation (World Aerospace) that was premised on his tardiness and absenteeism. Because there was substantial evidence to support the unemployment law judge's (ULJ) decision that relator committed employment misconduct by failing to notify his employer before being absent or tardy on numerous occasions, we affirm.

DECISION

Upon review of a ULJ's decision in an unemployment compensation matter, this court may reverse, remand, or modify if, among other reasons, the ULJ's decision is "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d) (2008). Whether an employee engaged in employment misconduct is a mixed question of law and fact. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether an employee committed a particular act is a question of fact. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). The ULJ's findings are reviewed in the light most favorable to the decision and will not be disturbed if there is evidence that reasonably tends to support them. *Schmidgall*, 644 N.W.2d at 804.

An employee who is 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 that displays clearly (1) a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee, or (2) a substantial lack of concern for the employment.” *Id.*, subd. 6(a) (Supp. 2009). “An employer has the right to establish and enforce reasonable rules governing absences from work,” and, generally, an employee’s failure to follow those rules constitutes misconduct. *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 28 (Minn. App. 2007).

Relator challenges specific factual findings supporting the ULJ’s decision. He claims that he was unaware of a World Aerospace policy requiring him to notify his supervisor before being absent, that he was not given warnings about his absenteeism, and that certain examples of his absenteeism involved situations in which he had satisfied his obligation to inform his supervisor before being absent. As to receiving notice of the company attendance policy, the company president, Isaac Phelps, testified about the existence of the policy, and relator admitted that he knew that if he was going to be late or absent, he needed to notify his employer. Phelps also testified that relator received four documented verbal warnings and one written warning prior to being discharged. While relator offered explanations for missing work on various occasions, the repeated warnings he received before being dismissed from employment establish that he was aware of the duty to report absences.

Further, most of the findings related to relator’s claims were made upon disputed evidence that was provided by relator, Phelps, and Mark Cerney, the company controller. Credibility determinations made on disputed evidence are exclusively made by the ULJ, and this court defers to those determinations. *Skarhus*, 721 N.W.2d at 344. And

although relator claims that he gave proper notice before one of the days on which he was alleged to have been tardy and World Aerospace conceded this inaccuracy, even without this particular incident, the record included substantial evidence to support the ULJ's decision.

Repeated absenteeism and tardiness have routinely been found to constitute employment misconduct. *See, e.g., Del Dee Foods, Inc. v. Miller*, 390 N.W.2d 415, 418 (Minn. App. 1986) (noting that absenteeism has been recognized as evidence of misconduct and “an employee engages in misconduct if he is absent even once without notifying his employer”); *Evenson v. Omnetic's*, 344 N.W.2d 881, 883 (Minn. App. 1984) (ruling that repeated tardiness after warnings constitutes employment misconduct). Because there was substantial evidence to support the ULJ's decision here, we affirm.

Affirmed.