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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-64**

Jessica J. Johnson,
Relator,

vs.

Sky Ventures LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed February 26, 2008
Affirmed
Peterson, Judge**

Department of Employment and Economic Development
File No. 13616 06

Jessica J. Johnson, 6014 Ninth Street North, #4, Oakdale, MN 55128 (pro se relator)

Sky Ventures LLC, c/o Talx UCM Services Inc., Ken Lund, 965 Decatur Avenue North,
Golden Valley, MN 55427 (respondent)

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(for respondent Department of Employment and Economic Development)

Considered and decided by Wright, Presiding Judge; Peterson, Judge; and
Huspeni, Judge.*

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

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from a decision by an unemployment law judge (ULJ) that relator is disqualified from receiving unemployment benefits because she was discharged for employment misconduct, relator argues that the ULJ's findings of fact are not supported by the record. Because the ULJ's findings are supported by substantial evidence and support the determination that relator was discharged for misconduct, we affirm.

FACTS

Relator Jessica J. Johnson worked as an assistant manager for respondent Sky Ventures, L.L.C., which operates several Kentucky Fried Chicken (KFC) and other fast-food restaurants, from October 2001 until July 2006. KFC conducts a customer-satisfaction survey that permits customers to rate their experience at a KFC restaurant by calling a telephone number that is printed on their receipts. Managers and assistant managers of restaurants that receive high survey ratings are eligible for bonuses. After learning that the customer-survey line had been called eight times from Johnson's home telephone and that numerous calls to the survey line had been made from the telephone in the KFC restaurant where Johnson worked during times when Johnson was working, KFC terminated Johnson's employment for attempting to manipulate the survey ratings.

After her discharge, Johnson established an unemployment benefits account with respondent Department of Employment and Economic Development (DEED). DEED determined that Johnson was not disqualified from receiving benefits because the employer did not provide verification of the calls.

Sky Ventures appealed, and a telephone hearing was held before a ULJ. At the hearing, Sky Ventures area manager Ken Lund presented a report that detailed the survey calls. Lund testified that the report showed that eight survey calls had been made from Johnson's home telephone number and 25 had been made from the store phone or fax line. Lund testified that, when confronted with the report, Johnson admitted making a couple of calls from her home and said that she was unaware of anyone else who could have called from her home although she did not recall making eight calls.

Johnson testified that she only called the customer-survey number once, when it was first introduced, to learn how the system worked. She suggested that her teenage children might have called the other times. Johnson denied making any of the calls from the restaurant and implied that she was being set up for complaining about a previous manager.

The ULJ determined that Johnson was discharged because of employment misconduct for attempting to manipulate the restaurant's rating results. The ULJ concluded that the manipulation amounted to a violation of the company's policy that prohibited falsification of records.

Johnson filed a request for reconsideration, which was denied. This certiorari appeal followed.

DECISION

This court may reverse or modify the decision of a ULJ if the substantial rights of the petitioner may have been prejudiced because the ULJ's findings, inferences, conclusion, or decision are affected by error of law or unsupported by substantial

evidence. Minn. Stat. § 268.105, subd. 7(d)(4)-(5) (2006). Substantial evidence means “(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety.” *Minn. Ctr. for Env'tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

Employees discharged for misconduct are disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (Supp. 2005). “Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether an employee committed the alleged act is a fact question. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). We defer to the ULJ’s credibility determinations and findings of fact. *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007). But whether a particular act constitutes employment misconduct is a question of law, which we review de novo. *Schmidgall*, 644 N.W.2d at 804; *Scheunemann*, 562 N.W.2d at 34.

Employment misconduct is defined as “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.” Minn. Stat. § 268.095, subd. 6(a) (2004). Refusal to abide by an employer’s reasonable policies and requests constitutes disqualifying misconduct. *Schmidgall*, 644 N.W.2d at 804; *see also Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 343-44 (Minn. App. 2006) (affirming ULJ’s

determination that claimant's theft of less than four dollars worth of food constituted disqualifying employment misconduct because it undermined employer's ability to trust claimant).

Johnson challenges the ULJ's finding that she called the customer-survey number and disputes the ULJ's conclusion that she committed employment misconduct. But evidence was introduced showing that at least eight calls to the survey line were made from Johnson's home, and Lund testified that Johnson initially admitted making a couple of the calls from her home and said she was unaware of anyone else who could have called from her home. The ULJ is entitled to weigh this testimony and make credibility decisions. *Ywswf*, 726 N.W.2d at 529; *Skarhus*, 721 N.W.2d at 345. The testimony supports the ULJ's finding of fact that Johnson placed calls from her home.

Johnson argues that there is no evidence that she is the one who made the calls to the survey line from the restaurant. She argues that Sky Ventures should have produced work schedules from the times that the in-store calls were made and that, had they been produced, they may have shown that she could not have made the calls. But the ULJ did not make findings of fact relating to the calls made from the store. Therefore, as respondent DEED points out, whether Johnson made the calls from the store is not determinative. Rather, the ULJ's conclusion that Johnson committed employment misconduct rests on the finding that she made calls to the survey system from her home. This finding alone is sufficient to support the ULJ's conclusion that Johnson attempted to manipulate the survey system.

Johnson also argues that her discharge for calling the survey line is a pretext and that she was fired for “knowing too much” about the store. She argues that there would be no benefit to be received from making calls to the survey system because, as an assistant manager, she was only eligible for a very small portion of any bonus received by the store and that “hundreds” and “thousands” of calls would need to be made in order to manipulate the system. But receiving a benefit is not a required element of employment misconduct. Rather, attempting to manipulate the rating system in violation of the prohibition against falsifying records, even if ultimately unsuccessful, “violates the standards of behavior the employer has the right to reasonably expect.” Minn. Stat. § 268.095, subd. 6(a). Accordingly, the ULJ’s finding that Johnson placed calls from her home supports the conclusion that Johnson was discharged for employment misconduct.

Affirmed.