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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-0424**

Temphy Thompson,  
Relator,

vs.

ERP Fusion Consulting,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed April 29, 2008  
Affirmed  
Shumaker, Judge**

Department of Employment and Economic Development  
File No. 14978 06

Temphy Thompson, 6701 81st Avenue North, Brooklyn Park, MN 55445 (pro se relator)

ERP Fusion Consulting, 8351 Roswell Road, Suite 194, Atlanta, GA 30350 (respondent-employer)

Lee B. Nelson, Katrina I. Gulstad, Minnesota Department of Employment and Economic Development, E200 First National Bank Building, 332 Minnesota Street, St. Paul, MN 55101-1351 (for respondent-department)

- Considered and decided by Shumaker, Presiding Judge; Toussaint, Chief Judge; and Willis, Judge.

## UNPUBLISHED OPINION

**SHUMAKER**, Judge

In her certiorari appeal, relator challenges an unemployment law judge's determination that she was disqualified from receiving unemployment benefits because she was discharged for misconduct by falsifying expense reports and misleading her employer. Relator claims that she did not commit misconduct, arguing that she followed her employer's instructions and normal business practices for the submission of expenses for reimbursement. We affirm.

### FACTS

ERP Fusion Consulting hired relator Temphy Thompson to work in Austin, Texas, as a software consultant for ERP's client, Whole Foods. The assignment began on September 5, 2006, and required Thompson to travel between Austin and Minneapolis twice every week for four to six weeks. Thompson's contract provided for an hourly wage and reimbursement for, among other things, "reasonable travel expenses to include economy class round trip airfare."

Thompson had trouble finding child-care for her two young children while she worked in Austin. She told ERP she needed to bring her children with her to Austin. ERP replied that it could not authorize additional expenses for her children's travel because that was not part of Thompson's contract.

Thompson arranged child-care for her son in Minnesota and found a friend to travel with her and her infant daughter to Austin. Thompson's daughter did not need a ticket for her travel, but, without ERP's permission to obtain reimbursement for it,

Thompson purchased a second plane ticket for her friend to travel with her and take care of her daughter.

In her expense report for her first week of work, Thompson claimed for reimbursement two roundtrip tickets between Minneapolis and Austin. When ERP questioned the second ticket, Thompson lied and said that it was for her daughter. ERP explained that the contract allowed expenses only for Thompson's travel. Thompson argued for payment of the expenses, saying her daughter had to travel with her. She did not reveal that the ticket was actually used for her friend's travel. Thompson also claimed that Whole Foods had approved the expense. ERP offered partial reimbursement of \$250 for the second ticket, but Thompson refused. ERP then offered \$350, and Thompson also refused that offer.

On September 9, 2006, ERP sent an email to Thompson stating, "This email is to inform you that you have been terminated from our project at Whole Foods. You will not be reporting on site next week."

Thompson applied for unemployment benefits. On October 23, 2006, the Minnesota Department of Employment and Economic Development disqualified Thompson from receiving unemployment benefits, finding that she quit her employment without a good reason caused by the employer.

Thompson appealed to an unemployment law judge (ULJ), who held a telephone hearing during which Thompson and a partner with ERP testified. The ULJ determined that Thompson did not quit her job with ERP but rather was terminated for employment misconduct, and thus was disqualified from receiving unemployment benefits. The

evidence showed, and the ULJ found, that “Thompson deliberately gave false information, or, at a minimum, knowingly incomplete and misleading information, for the purpose of obtaining an expense payment which she knew or should have known she was not entitled to.”

Thompson requested reconsideration, and the ULJ affirmed the decision as “factually and legally correct.” Thompson timely petitioned for certiorari review of the ULJ’s decision to disqualify under Minn. Stat. § 268.105, subd. 7(a) (2006).

## **D E C I S I O N**

### **I.**

Relator was disqualified from receiving unemployment benefits because she was terminated for employment misconduct. She argues that she did not commit employment misconduct, but acted as she was instructed by ERP.

When an employer discharges an employee for employment misconduct, the employee is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2006). Employment misconduct is “intentional, negligent, or indifferent conduct that displays clearly” either “a serious violation of the standards of behavior the employer has the right to reasonably expect” or “a substantial lack of concern for the employment.” *Id.*, subd. 6(a) (2006).

Whether an employee has engaged in employment misconduct is a mixed question of fact and law. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). “Whether the employee committed a particular act is a question of fact.” *Id.* Whether the

employee's actions constitute misconduct is a question of law to be reviewed by this court de novo. *Id.*

This court reviews “the ULJ’s factual findings in the light most favorable to the decision” and will not disturb a ULJ’s findings as long as there is evidence that substantially sustains those findings. *Id.* The ULJ’s determination will be affirmed unless the decision derives from unlawful procedure, relies on error of law, is unsupported by substantial evidence, or is arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d)(3)-(6) (2006).

Thompson argues that she was candid with ERP about her need for a second airplane ticket and that it is a common business practice in the industry for employers to reimburse the expense of a companion’s travel. She further denies that she ever lied to ERP.

The substantial evidence contradicts Thompson’s arguments. It reveals that she bought the second ticket before requesting permission to obtain reimbursement for it and then she falsely asserted that the expense was for her child’s travel. Whether or not there is an industry practice of reimbursing a companion’s travel expenses, as Thompson claims, that was neither the practice nor part of the contract of ERP and Whole Foods. Finally, the evidence shows that Whole Foods did not authorize this reimbursement as Thompson represented to ERP.

Upon the evidence presented, the ULJ did not find Thompson to be credible. Because “[c]redibility determinations are the exclusive province of the ULJ,” we will not reverse a decision based on credibility assessments unless they lack substantial support in

the record. *Skarhus*, 721 N.W.2d at 345. The ULJ's credibility assessments here are fully supported by the evidence.

**Affirmed.**