

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1887**

Yvonn Lerro-Miller,
Relator,

vs.

AALFA Family Practice, P.A.,
Respondent,

Department of Employment
and Economic Development,
Respondent.

**Filed June 11, 2012
Affirmed
Worke, Judge**

Department of Employment and Economic Development
File Nos. 27821840-3, 28443839-3

Yvonn N. Lerro-Miller, Little Canada, Minnesota (pro se relator)

AALFA Family Practice, P.A., White Bear, Minnesota (respondent)

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

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Relator challenges an unemployment-law judge's (ULJ) decision that she was discharged for employment misconduct and is ineligible for unemployment benefits. She argues that her failure to report the reasons for her dismissal from previous employment did not constitute misconduct and that the ULJ erred by holding a second evidentiary hearing. We affirm.

DECISION

Relator Yvonn Lerro-Miller applied for a certified-medical-assistant position with respondent AALFA Family Practice, P.A. After her hiring, AALFA verified the reason for relator's dismissal from her prior employment at a Minnesota correctional facility, which did not conform to relator's reason provided in her application. Following suspension, AALFA discharged relator. A ULJ determined that relator was discharged because of employment misconduct and ineligible for benefits.

When reviewing a ULJ decision, this court may affirm the decision, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator may have been prejudiced because the findings, inferences, conclusion, or decision are "(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious." Minn. Stat. § 268.105, subd. 7(d) (2010).

Employment “misconduct” is “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.” Minn. Stat. § 268.095, subd. 6(a) (2010).

Whether an employee engaged in employment misconduct presents a mixed question of fact and law. Whether the employee committed a particular act is an issue of fact. This court views questions of fact in the light most favorable to the decision of the ULJ and gives deference to the ULJ’s credibility determinations. . . . Whether the facts constitute employment misconduct is a question of law, which this court reviews de novo.

Cunningham v. Wal-Mart Assocs., Inc., 809 N.W.2d 231, 235 (Minn. App. 2011) (citations omitted). This court will not disturb the ULJ’s factual findings when the evidence substantially sustains them. Minn. Stat. § 268.105, subd. 7(d)(5); *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008).

In *Santillana v. Cent. Minn. Council on Aging*, 791 N.W.2d 303 (Minn. App. 2010), this court addressed misconduct in a case factually analogous to this case. There, an employee stated during her job interview that she left her prior employment at a nursing home “because she was interested in part-time work,” when she had actually been discharged for theft after writing over \$6,000 in personal checks to herself from a client’s checkbook. *Id.* at 305. The employee was discharged when her employer discovered that the employee had been convicted of a felony for exploitation of a

vulnerable adult. *Id.* at 305-06. This court affirmed the ULJ’s decision to deny the employee benefits, ruling that “a material misrepresentation during the hiring process . . . fit[s] within the statutory definition of employment misconduct. Intentionally misrepresenting a fact that is material to employment shows a substantial lack of concern for the employment.” *Id.* at 307.

Likewise here, the ULJ concluded that relator’s actions amounted to employment misconduct. Relator made a material misrepresentation to AALFA that she quit her prior employment because of work hours, when the actual reason for her dismissal was for associating with an offender in violation of her employer’s policies. Relator was charged with two felony counts of criminal sexual conduct because she had sexual intercourse with a prison inmate and artificially inseminated herself with the prisoner’s semen. The facts surrounding relator’s liaison were material to her hiring, particularly for a job in a clinic that primarily offers infertility treatment to its patients. While relator attempted to conceal the reasons for her prior dismissal from AALFA, the record demonstrates that the facts surrounding her conduct in her prior employment were of great importance to AALFA in making its hiring decision. By failing to honestly report the reason for her prior discharge, relator demonstrated “a substantial lack of concern for the employment,” which meets the definition of employment misconduct under Minn. Stat. § 268.095, subd. 6(a)(2).

Relator also argues that the record should be limited to the documents and testimony from the first hearing before the ULJ, rather than a second hearing that was initiated by the ULJ. As support for this argument, relator notes that she was under a

duty to provide notice in her application for unemployment benefits of “all employers and the reasons for no longer working for [the current and previous] employers during the six calendar months before the date of the [benefits] application.” Minn. Stat. § 268.101, subd. 1(a) (2010). This provision relates to eligibility determinations and the basis for an employee’s departure from a prior job may impact that determination. *Id.*

However, that provision does not limit the record in an evidentiary hearing before a ULJ. An evidentiary hearing in an unemployment appeal is an “evidence gathering inquiry” during which the ULJ “must ensure that all relevant facts are clearly and fully developed.” Minn. Stat. § 268.105, subd. 1(b) (2010). The rules of ULJ hearings need not conform to the rules of evidence or “other technical rules of procedure.” *Id.* The ULJ’s stated reasons for initiating a second evidentiary hearing were to supplement the record on the basis for relator’s prior dismissal and to determine whether relator made “false statements to the department in an attempt to obtain unemployment benefits.” The ULJ was permitted to hold a second evidentiary hearing to fulfill its duty to fully develop the record. *See Vasseei v. Schmitt & Sons Sch. Buses Inc.*, 793 N.W.2d 747, 751 (Minn. App. 2010) (construing unemployment statute to permit ULJ to order an additional evidentiary hearing to assist in the development of the evidentiary record). Even if the record had been limited to evidence introduced during the first hearing, that evidence, which included a newspaper article that prompted relator’s suspension without pay and testimony from her supervisor about the delicate nature of AALFA’s business, was sufficient to prove that relator committed misconduct.

The ULJ's decision that relator was discharged for employment misconduct is supported by the record, and the ULJ did not err by holding a second evidentiary hearing. Therefore, we uphold the decision of the ULJ that relator is ineligible to receive unemployment benefits.

Affirmed.