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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0038**

Shanika L. Wilson,
Relator,

vs.

Best Buy Warehousing Logistics, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 6, 2012
Affirmed
Harten, Judge***

Department of Employment and Economic Development
File No. 28514549-3

Shanika L. Wilson, Burnsville, Minnesota (pro se relator)

Best Buy Warehousing Logistics, Inc., St. Louis, Missouri (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 Bjorkman, Presiding Judge; Rodenberg, Judge; and
Harten, Judge.

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

UNPUBLISHED OPINION

HARTEN, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) that she is ineligible for unemployment benefits because she was discharged for employment misconduct after being tardy to or absent from work on several occasions, in violation of her employer's attendance policy. She claims that the ULJ decision was incorrect because she was unaware that her conduct violated her employer's attendance policy and thought her absences were excused. Because the record included substantial evidence to support the ULJ decision, we affirm.

FACTS

Pro se relator Shanika Wilson worked at Best Buy Warehousing Logistics, Inc., (Best Buy) as a shipping warehouse worker from 2006 to 6 September 2011. Best Buy had an employment policy that permitted discharge for tardiness after receipt of five attendance "points" in a 12-month period. Points accrue as follows: two points for a no-call/no show; one point for an unplanned absence; and a half point for an unplanned tardy. Attendance points begin to accrue after an employee uses 48 hours of absence time. Employees are expected to call before their shift begins if they will be late to work.

Relator's supervisor, Dan Ashfeld, testified that relator had permission to leave work early on 7 March 2011, but she failed to report to work at all on that date; relator arrived late to work without calling ahead on three separate instances in March, April, and June; relator was absent on 20 June and called in only after her shift started; and relator was late to work without calling ahead on two occasions in August. According to

Ashfeld, under Best Buy's attendance policy, these absences and work tardiness totaled five-and-a-half points. On 6 September 2011, Best Buy discharged relator for violating its attendance policy.

The ULJ specifically found the employer's testimony "more credible than" relator's testimony "because it was clearer and more consistent than" relator's. The ULJ concluded that relator's conduct was sufficient to constitute employment misconduct within the meaning of the unemployment law and that relator was ineligible to receive benefits.

Upon relator's request for reconsideration, the ULJ affirmed the decision. The ULJ rejected relator's proffered evidence showing her good work performance, noting that she was discharged for attendance violations and not for poor work performance. The ULJ stated that although relator claimed to be unaware of her attendance points, the ULJ's decision is based on credibility determinations favoring Best Buy, and relator offered no new evidence to alter those determinations.

D E C I S I O N

This court reviews a ULJ decision to determine whether a party's substantial rights were prejudiced because the findings, inferences, conclusion, or decision are affected by an error of law or unsupported by substantial evidence in view of the submitted record. Minn. Stat. § 268.105, subd. 7(d)(4), (5) (2010). Whether an employee engaged in employment misconduct is a mixed question of fact and law. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted). Whether specific conduct amounts to misconduct is a question of law subject to de novo review, *id.*, but "[w]hether

the employee committed a particular act is a question of fact.” *Brisson v. City of Hewitt*, 789 N.W.2d 694, 696 (Minn. App. 2010) (quotation omitted). This court views questions of fact in the light most favorable to the ULJ’s decision and defers to the ULJ’s credibility determinations. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. 2006).

An employee who is discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). Misconduct is defined as “any intentional, negligent, or indifferent conduct . . . that displays clearly: (1) a serious violation of the standards of behavior the employer has the right to reasonably expect . . . or (2) a substantial lack of concern for the employment.” *Id.*, subd. 6(a) (2010). An employee’s failure to abide by the employer’s reasonable policies ordinarily constitutes employment misconduct, *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002), and an employer has the right to establish and enforce reasonable rules on employee attendance, including tardiness. *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 28 (Minn. App. 2007); *see Evenson v. Omneti’s*, 344 N.W.2d 881, 883 (Minn. App. 1984) (stating that an employer has the right to reasonably expect an employee to work scheduled hours).

A pattern of tardiness may constitute employment misconduct, even if it is not deliberate or willful. *Stagg*, 796 N.W.2d at 317 (employee discharged for excessive absenteeism and tardiness committed employment misconduct); *see Del Dee Foods, Inc. v. Miller*, 390 N.W.2d 415, 417 (Minn. App. 1986) (even a single work absence without permission may constitute misconduct); *Evenson*, 344 N.W.2d at 883 (continued

tardiness after warnings constituted disqualifying misconduct). The record here included evidence that relator was repeatedly warned about tardiness but that she continued to violate Best Buy's attendance policy. Relator claims that she thought that her absences were excused and she was unaware that her conduct violated Best Buy's attendance policy, but the record includes warnings signed by relator that notify her of violations and indicate that further violations could result in her discharge. On 21 June 2011, relator received a warning that informed her that she was "within 1 point of being subject to termination." While relator indirectly challenges the credibility determinations made by the ULJ, such rulings "are the exclusive province of the ULJ and will not be disturbed on appeal." *Bangtson v. Allina Med. Grp.*, 766 N.W.2d 328, 332 (Minn. App. 2009) (quotation omitted); see *McNeilly v. Dept. of Empl. & Econ. Dev.*, 778 N.W.2d 707, 710 (Minn. App. 2010) (stating, "This court . . . gives deference to the credibility determinations made by the ULJ"). The record includes substantial evidence supporting the ULJ's decision that relator committed misconduct, making her ineligible to receive unemployment benefits.

Affirmed.