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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0162**

Chezi Bakal,  
Relator,

vs.

B.W. Bloomington, LLC,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed September 17, 2012  
Affirmed  
Chutich, Judge**

Department of Employment and Economic Development  
File No. 28322072-3

Chezi Bakal, Bloomington, Minnesota (pro se relator)

B.W. Bloomington, LLC., Eden Prairie, Minnesota (respondent employer)

Lee B. Nelson, Megan Flynn, Department of Employment and Economic Development,  
St. Paul, Minnesota (for respondent department)

Considered and decided by Cleary, Presiding Judge; Chutich, Judge; and Hooten,  
Judge.

## UNPUBLISHED OPINION

**CHUTICH**, Judge

Relator Chezi Bakal challenges the determination by an unemployment law judge that he was discharged for employment misconduct and is ineligible for unemployment benefits. Because substantial evidence supports the judge's findings and the conclusions of law are correct, we affirm.

### FACTS

Respondent-employer BW Bloomington, Inc. operates the Quality Inn and Suites hotel (Quality Inn) in Bloomington. Bakal began working as a part-time night auditor at Quality Inn in March 2005. He generally worked the overnight shift on Friday and Saturday nights, from 11 p.m. to 7 a.m.

Quality Inn gave Bakal written warnings or otherwise disciplined him several times since he began work in 2005. On August 16, 2010, Bakal received a written warning and a three-shift suspension from Quality Inn for several issues including walking around the hotel lobby with no shoes on, not having his suspenders fastened, not following through with guest complaints, asking guests for cigarettes, leaving the front desk unattended, and not getting required credit card information from guests.

Quality Inn gave Bakal a final written warning in November 2010, for failing to follow Quality Inn's procedures when checking guests into the hotel. Bakal did not authorize two separate guests' credit cards or get the guests' addresses. Due to Bakal's failure, the guests' payments could not be processed and Quality Inn was unable to pursue payment without their addresses.

On April 9, 2011, a guest was having a birthday party for his wife in one of the hotel's meeting rooms. While on duty, Bakal took a beer from the party and drank it in the lobby of the hotel. The guest later claimed that Bakal said, "One beer on a Saturday never hurts. It'll make the night go faster." Quality Inn has a policy that employees must be drug and alcohol free while on duty. Quality Inn terminated Bakal's employment because he violated its drug and alcohol policy and for his other recent violations of hotel policy.

Bakal applied for unemployment benefits and the Minnesota Department of Employment and Economic Development (department) determined that he was ineligible for benefits because he was discharged for misconduct. Bakal appealed the determination to an unemployment law judge.

After a telephone hearing, the judge concluded that Bakal was ineligible for unemployment benefits. Specifically, the judge concluded that "Bakal's violation of the employer's policy prohibiting drinking while on duty, in light of his previous final written warning" was employment misconduct. The judge denied Bakal's subsequent request for reconsideration. This certiorari appeal followed.

## **DECISION**

Under Minnesota law, an applicant for unemployment benefits who was discharged because of employment misconduct is ineligible for benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). Employment misconduct includes "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 (2010).

“Whether an employee engaged in employment misconduct presents a mixed question of fact and law.” *Cunningham v. Wal-Mart Assocs., Inc.*, 809 N.W.2d 231, 235 (Minn. App. 2011). Whether the employee committed a particular act is an issue of fact, and we will not disturb the unemployment law judge’s findings if they are substantially supported by the evidence. *Skarhus v. Davanni’s, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We review de novo whether the employee’s act is employment misconduct. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). This court may “affirm the decision, remand it for further proceedings, or reverse or modify it if the relator’s substantial rights have been prejudiced because the findings, inferences, conclusion, or decision is affected by an error of law or is unsupported by substantial evidence in view of the record as a whole.” *Sykes v. Nw. Airlines, Inc.*, 789 N.W.2d 253, 255 (Minn. App. 2010); *see also* Minn. Stat. § 268.105, subd. 7(d) (2010).

Substantial evidence supports the judge’s findings of fact as to Bakal’s actions in this case. The judge credited the exhibits and testimony given by Quality Inn in finding that Bakal had been warned about improper dress and his failure to authorize guest credit cards and obtain addresses from guests. The evidence also supports the finding that Bakal drank a beer while on duty on April 9, 2011.

Bakal argues that the judge erroneously believed the testimony of Quality Inn’s witnesses over his own testimony and that of his witness. Because “[c]redibility determinations are the exclusive province of the [judge] and will not be disturbed on

appeal,” this argument is without merit. *Skarhus*, 721 N.W.2d at 345; *see also Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 205 (Minn. App. 2004) (“When parties have presented conflicting evidence on the record, appellate courts must defer to the commissioner’s ability to weigh the evidence; they may not weigh that evidence on review.”), *review denied* (Minn. Mar. 30, 2004). The judge considered all the testimony, weighed the credibility of the witnesses, and found Quality Inn’s witnesses to be more credible than Bakal.

Further, the judge set out his reasons for crediting Quality Inn’s testimony and discrediting Bakal’s testimony. *See* Minn. Stat. § 268.105, subd. 1(c) (2010) (“When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony.”); *see also Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 29 (Minn. App. 2007). The judge specifically found that “Bakal’s testimony [was] comprised of repeated self-interested denials of any wrongdoing,” and that Bakal’s version of events was “not as credible as the testimony given by the employer’s witnesses.”

Bakal next contends that he did not commit employment misconduct. But Bakal violated the hotel’s policy of authorizing credit cards and obtaining guest addresses upon check-in. The violation was serious, as it resulted in Quality Inn having to forego payment for certain guests. An employee’s refusal to follow his employer’s “reasonable requests and policies” is employment misconduct. *Bray v. Dogs & Cats Ltd.*, 679 N.W.2d 182, 184 (Minn. App. 2004); *see also Vargas*, 673 N.W.2d at 206 (“An employer

has a right to expect that its employees will abide by reasonable instructions and directions.”). Bakal’s actions showed a substantial lack of concern for the employment, as he had been warned about his behavior in the past and had received a “final warning” about six months before his termination. *See Schmidgall v. FlimTec Corp.*, 644 N.W.2d 801, 806–07 (Minn. 2002) (stating that “multiple violations of the same rule involving warnings or progressive discipline” can show employment misconduct).

In addition, Bakal drank a beer on duty in violation of his employer’s policy. Such action is misconduct. *See Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774–75 (Minn. App. 2008) (holding that an employee commits employment misconduct where he consumes alcohol in violation of the employer’s policy prohibiting such consumption), *review denied* (Minn. Oct. 1, 2008). Since the judge’s factual findings are supported by substantial evidence, he did not err in concluding that Bakal was discharged for employment misconduct. Thus, Bakal is ineligible for unemployment benefits.

**Affirmed.**