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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1009**

Denise R. Larson,
Relator,

vs.

North Memorial Health Care,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed March 24, 2014
Affirmed
Kirk, Judge**

Department of Employment and Economic Development
File No. 30868497-3

Denise R. Larson, Coon Rapids, Minnesota (pro se relator)

Krista Hatcher, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for respondent North Memorial Health Care)

Lee B. Nelson, Christine E. Hinrichs, Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

KIRK, Judge

Relator challenges an unemployment-law judge's (ULJ) determination that she is ineligible for benefits because she was discharged for employment misconduct after repeatedly failing to report to work. We affirm.

DECISION

This court reviews a ULJ's decision to determine whether a party's substantial rights were prejudiced because the findings, inferences, conclusion, or decision are unsupported by substantial evidence in view of the record as a whole or affected by an error of law. Minn. Stat. § 268.105, subd. 7(d) (2012).

Whether relator Denise R. Larson engaged in conduct that disqualifies her from unemployment benefits is a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether a particular act constitutes employment misconduct is a question of law, which this court reviews de novo. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). But whether the employee committed the particular act is a question of fact. *Id.* This court reviews "the ULJ's factual findings in the light most favorable to the decision" and defers to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

An employee who is discharged from employment for misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2012). "Employment misconduct means 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(a) (2012). In general, an employee’s refusal to abide by an employer’s reasonable policies and requests is disqualifying misconduct. *Schmidgall*, 644 N.W.2d at 804. “Minnesota law allows an employer to establish and enforce reasonable rules governing employee absences.” *Cunningham v. Wal-Mart Assocs., Inc.*, 809 N.W.2d 231, 235 (Minn. App. 2011). The mental-illness exception to the statute provides that “conduct that was a consequence of the applicant’s mental illness or impairment” does not constitute employment misconduct. Minn. Stat. § 268.095, subd. 6(b)(1) (2012).

This court “accords deference to a ULJ’s decision not to hold an additional hearing and will reverse that decision only for an abuse of discretion.” *Skarhus*, 721 N.W.2d at 345. When deciding a request for reconsideration, the ULJ “must not . . . consider any evidence that was not submitted at the evidentiary hearing,” but must order an additional evidentiary hearing to consider new evidence if it “would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence.” Minn. Stat. § 268.105, subd. 2(c) (2012).

Larson was discharged from employment at respondent North Memorial Health Care’s Sleep Health Center after she failed to report to work on January 23 and 30, 2013. After Larson applied for unemployment benefits, a Minnesota Department of Employment and Economic Development (DEED) clerk determined that she was ineligible for benefits because she was discharged for misconduct.

Larson argues that her failure to report to work is a result of her mental illness and does not constitute employment misconduct because (1) she perceived that she was subjected to a hostile work environment and (2) her employer failed to provide her with workplace accommodations for her mental illness. *See* Minn. Stat. § 268.095, subd. 6(b)(1). Larson submitted medical information documenting her mental illness diagnoses to the ULJ.

The ULJ upheld DEED's ineligibility determination, finding that Larson was discharged for misconduct for failing to report to work on two occasions. The ULJ found that Larson had been recently warned about her failure to report to work and that Larson's supervisors had promptly investigated and addressed her allegations that she was subjected to a hostile work environment. On reconsideration, the ULJ affirmed his decision, finding that Larson failed to show a connection between her mental illness and her inability to contact her supervisors and let them know in advance that she would be absent from work.

As a threshold issue, Larson does not appeal the ULJ's determination that she was discharged for not reporting to work. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (holding that issues not briefed on appeal are waived). After reviewing the record, we are not persuaded by Larson's arguments. In employment-misconduct cases, the employee's conduct as a whole is relevant. *Schmidgall*, 644 N.W.2d at 806-07. Larson failed to establish that her mental illness precluded her from contacting her employer to inform them of her absences. Larson repeatedly contacted her supervisors by email and phone throughout January 2013 and also met with them in person to discuss her claims

about a hostile work environment. The record also demonstrates that when Larson requested that her supervisors relocate her to a different branch, she failed to inform them that she was requesting this change because of her mental illness. *Cf. Cunningham*, 809 N.W.2d at 233, 236 (concluding Cunningham's repeated failure to report to work was a consequence of his mental illness, satisfying the requirement of Minn. Stat. § 268.095, subd. 6(b)(1), after he alerted his employer that he was having difficulty completing his work tasks because of his mental impairment, and his employer dissuaded him from filing a formal request for accommodation). The record shows that Larson's supervisors investigated her claim of harassment at work and felt the issue had been resolved. For these reasons, we conclude that the ULJ did not abuse its discretion when it determined Larson was not eligible for benefits.

Affirmed.