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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0344**

Linda M. Anderson,
Relator,

vs.

American Baptist Homes of the Midwest,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed February 26, 2008
Affirmed
Minge, Judge**

Department of Employment and Economic Development
File No. 15932 06

Linda M. Anderson, 1014 James Avenue, Albert Lea, MN 56007 (pro se relator)

American Baptist Homes of the Midwest, 14850 Scenic Heights Road, Suite 125, Eden
Prairie, MN 55344 (respondent employer)

Lee B. Nelson, First National Bank Building, 332 Minnesota Street, Suite 200, St. Paul,
MN 55101 (for respondent department)

Considered and decided by Minge, Presiding Judge; Halbrooks, Judge; and
Stoneburner, Judge.

UNPUBLISHED OPINION

MINGE, Judge

Relator Linda Anderson challenges the decision of an unemployment law judge that she engaged in employment misconduct and is therefore disqualified from receiving unemployment benefits from the Department of Employment and Economic Development. We affirm.

DECISION

An employee terminated for employment misconduct is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2006). Whether an employee committed employment misconduct is a mixed question of fact and law. *Schmidgall v. Filmtec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether the employee committed a particular act is a question of fact. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Findings of fact are reviewed in the light most favorable to the unemployment law judge's (ULJ) decision, and deference is given to the ULJ's credibility determinations. *Id.* This court will not disturb the ULJ's factual findings if supported by substantial evidence. *Id.*; *see also* Minn. Stat. § 268.105, subd. 7(d)(5) (2006). But whether the employee's act constitutes disqualifying misconduct is a question of law. *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 27 (Minn. App. 2007). Questions of law are reviewed de novo. *Mahoney & Hagberg v. Newgard*, 729 N.W.2d 302, 306 (Minn. 2007).

In this case, substantial evidence supports the ULJ's findings of fact. The record shows that relator Linda Anderson began working for respondent American Baptist

Homes of the Midwest (American Baptist) as a client-support person in July of 1996. American Baptist cares for semi-independent adults in seven homes, each home containing four clients. As part of her employment, Anderson administered medications to American Baptist's clients.

On September 28, 2006, one of American Baptist's clients had 13 teeth pulled. The client was in Anderson's care that evening. Two licensed practical nurses left doctor's orders at the patient's home explaining the proper administration of two pain medications. The doctor's order stated "for pain, Vicodin every four hours, p.r.n. Use Vicodin today after eating and before bedtime. Tomorrow may substitute Motrin 600 mg every four hours p.r.n. for pain." Although Anderson administered a Vicodin before her client went to bed, she failed to administer the first dose.

Approximately one week later, a nurse discovered that the patient did not receive both dosages of Vicodin. The nurse twice asked Anderson to meet with her so that she could explain how Anderson was in error, but Anderson did not show up for the meetings. Anderson also refused to write a report about her failure to administer the medication, as required.

Anderson, by her own admission, had made medication errors in the past by failing to "sign off" after she administered a medication. After the nurse told her superiors about Anderson's mistake, American Baptist deemed Anderson no longer fit to administer medications, and terminated her employment.

"Employment misconduct" means:

[A]ny intentional, negligent, or indifferent conduct, on the job or off the job (1) that displays clearly a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee, or (2) that displays clearly a substantial lack of concern for the employment.

Minn. Stat. § 268.095, subd. 6(a) (2006).

In order for a single incident to constitute misconduct, it must have a significant adverse impact on the employer. *Id.* Administration of medication is an extremely important function in a residential facility for people who need assistance. Although errors may be inevitable in any program, the employer's goal is to minimize them. While Anderson's failure to administer the Vicodin dosage was negligent or indifferent conduct, there is no finding or indication that that single incident had a significant adverse impact on American Baptist. Although, standing alone, the one failure to properly administer medicine may not constitute misconduct that would preclude Anderson from receiving benefits, the ULJ also relied on the prior medication errors in making the determination to disqualify Anderson.

An employer has a right to expect its employees to follow reasonable instructions and directions. *Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 206 (Minn. App. 2004), *review denied* (Minn. Mar. 30, 2004). Generally, refusing to follow an employer's reasonable policies and requests is disqualifying misconduct because it shows a substantial lack of concern for the employer's interest. *See Schmidgall*, 644 N.W.2d at 804. After learning she had erred, Anderson did not follow protocol. She refused to meet with her supervising nurse because, she claims, the nurse is "rude" and "not nice." She also refused to write a report, despite her knowledge that it was the correct course of

action. This lack of concern for following the reasonable rule of her employer also constitutes misconduct.

We conclude that Anderson's failure to administer the Vicodin, together with her past errors in medication and refusal to follow reasonable rules, constitute negligent or indifferent conduct that displays a serious violation of the standards of behavior that American Baptist has a right to expect from Anderson and that the ULJ's determination of qualifying misconduct is supported by the record.

Affirmed.

Dated: