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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1588**

Brent Schmeling,
Relator,

vs.

Cornerstone Contracting, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 4, 2012
Affirmed
Wright, Judge**

Minnesota Department of Employment and Economic Development
File No. 27421702-3

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Considered and decided by Wright, Presiding Judge; Ross, Judge; and Muehlberg,
Judge.*

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

UNPUBLISHED OPINION

WRIGHT, Judge

Relator challenges the determination of the unemployment law judge (ULJ) that relator was discharged for employment misconduct and, therefore, is ineligible for unemployment benefits. We affirm.

FACTS

Relator Brent Schmeling worked as an office manager for Cornerstone Contracting, Inc. (Cornerstone) from September 2008 to March 10, 2011. Initially, Schmeling was a “great employee.” In 2010, however, his performance deteriorated. Schmeling’s supervisors observed his improper use of the Internet during work hours, inappropriate and disrespectful behavior, and failure to complete assigned tasks. In January 2011, Cornerstone’s management met with Schmeling to discuss its concerns.

Approximately two months later, after Schmeling’s attitude and work did not improve, Cornerstone’s management met with Schmeling again. Cornerstone first advised Schmeling that it was changing his employment status from a full-time, salaried employee to a part-time, hourly employee. Second, Cornerstone issued Schmeling a written warning that referenced four behaviors and made them “grounds for immediate dismissal.” Cornerstone asked Schmeling to sign the warning. Schmeling refused.

Two days later, after consulting with an attorney, Schmeling returned to work and again refused to sign the written warning. Believing that Schmeling’s unwillingness to sign the warning indicated that he “would not change his behavior,” Cornerstone discharged Schmeling.

Schmeling applied for unemployment benefits and the Minnesota Department of Employment and Economic Development (DEED) determined that Schmeling is ineligible to receive unemployment benefits because he was discharged for employment misconduct. Schmeling appealed this determination. After a telephonic hearing, the ULJ concluded that Schmeling is ineligible to receive unemployment benefits because he was discharged for employment misconduct. Following Schmeling's request for reconsideration, the ULJ affirmed the decision. This certiorari appeal followed.

D E C I S I O N

When reviewing the decision of a ULJ, we may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator 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).

An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (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.” *Id.*, subd. 6(a) (2010).

The reason an employee is discharged, if disputed, is a question of fact. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). A ULJ's factual findings are viewed in the light most favorable to the decision and will not be disturbed on appeal if there is evidence that reasonably tends to sustain those findings. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). But whether a particular act constitutes employment misconduct is a question of law, which we review de novo. *Id.* Because credibility determinations are the exclusive province of the ULJ, we accord such determinations deference on appeal. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Schmeling argues that he was discharged for refusing to sign the written warning and that, because he disagreed with the warning, his refusal does not constitute employment misconduct. The ULJ found that "Schmeling's refusal to sign the warning was not the only reason for the discharge." Viewed in the light most favorable to the decision, this factual finding is supported by the record. Three members of Cornerstone's management testified that Schmeling was discharged because of ongoing problems with his conduct, including personal use of the Internet during work hours, disrespectful behavior towards Cornerstone's vice president, and failure to complete assigned tasks. Their testimony addressed specific examples of such conduct and evidence that Schmeling did not heed warnings to cease such conduct. We conclude that the persistent nature of Schmeling's improper conduct is sufficient evidentiary support for the finding of employment misconduct.

Moreover, we observe that Schmeling mischaracterizes the facts in this case when he argues that his refusal to sign the written warning is not employment misconduct because complying with the request would require him to admit to allegations he disagrees with. The warning at issue here does not require Schmeling to *admit* prior conduct; it merely asks Schmeling to acknowledge (1) that he has been warned in the past not to engage in certain conduct, and (2) engaging in four specific behaviors in the future “will be grounds for immediate dismissal.” Because Cornerstone’s request for a signature was reasonable, Schmeling’s refusal to sign the warning constitutes employment misconduct. *See Sandstrom v. Douglas Mach. Corp.*, 372 N.W.2d 89, 91 (Minn. App. 1985) (acknowledging general rule that refusal of employer’s reasonable request constitutes employment misconduct).

Accordingly, the ULJ correctly concluded that Schmeling is ineligible to receive unemployment benefits because he was discharged for employment misconduct.

Affirmed.