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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1766**

Carla R. Thompson,
Relator,

vs.

Specialized Treatment Services, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 25, 2012
Affirmed
Connolly, Judge**

Department of Employment and Economic Development
File No. 27980653-3

Carla R. Thompson, St. Paul, Minnesota (pro se relator)

Specialized Treatment Services, Inc., Edina, Minnesota (respondent)

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

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Willis,
Judge.*

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

UNPUBLISHED OPINION

CONNOLLY, Judge

Relator appeals from a denial of unemployment benefits, arguing that she did not commit employment misconduct. Because we conclude that the record substantially supports the unemployment-law judge's (ULJ) finding that relator did commit employment misconduct, we affirm.

FACTS

Relator Carla R. Thompson worked full-time at Specialized Treatment Services Inc. (STS) as a chemical-dependency counselor from March 8, 2008 to June 24, 2011. At STS, Thompson typically had a caseload of 50 clients. Charts must be completed for each client within ten business days after the counseling session. These charts require entries on six different dimensions.

On April 7, 2010, Thompson received a performance review that advised her to document individual client needs with more specificity. On May 24, 2010, Thompson received a written warning because her charts did not comply with state regulations. In April 2009, Thompson was warned for improper Internet usage, which caused her computer to crash. On May 6, 2011, Thompson again received a warning for visiting non-business-related websites. Thompson refused to sign the acknowledgement of the written warning and claimed she was allowed to visit the sites because she was using the Internet to find clothing and other items for her clients.

Sometime in April 2011, STS received a citation from the Minnesota Department of Human Services because counselors' charts were not up to date and did not meet state

regulation requirements. At a performance review conducted on May 21, 2011, management noted that Thompson's charting was still not up to date and that many entries were not submitted within ten business days after the counseling session as STS required. Thompson was given four weeks to update her charts.

On June 24, 2011, STS audited Thompson's charts for the months of March, April, and May. The treatment plans for Thompson's 50 clients were all identical and not individualized. Thompson was required to create entries updating the clients' vulnerable adult status and suicidal ideation. All of Thompson's clients' charts lacked these entries. Thompson completed charts more than ten business days after the counseling session in 47 out of 50 cases for March 2011, in 16 out of 50 cases in April 2011, and in 44 out of 50 cases in May 2011. Because of Thompson's delay in charting, some clients had positive drug tests and did not receive timely interventions that could have occurred had charting been timely. Thompson's employment was terminated on June 24, 2011.

Thompson applied to the Minnesota Department of Employment and Economic Development (DEED) for unemployment-compensation benefits, and in July 2011 DEED determined that she was ineligible for benefits because she had been discharged for employment misconduct. Thompson appealed DEED's determination, and a hearing was conducted with a ULJ in August 2011. The ULJ determined that Thompson was discharged for employment misconduct and is ineligible for unemployment benefits because Thompson was consistently behind on her client charts, received warnings, and engaged in intentional, negligent, or indifferent conduct that constituted a serious

violation of the employer's standards. Thompson filed a request for reconsideration, and the ULJ affirmed his earlier decision. This certiorari appeal follows.

D E C I S I O N

On appeal, this court may affirm a ULJ's decision or reverse and modify the decision if the petitioner's substantial rights have been prejudiced because the decision is not supported by substantial evidence, is arbitrary or capricious, derives from improper procedure, or is affected by error of law. Minn. Stat. § 268.105, subd. 7(d) (2010). "Whether an employee committed misconduct is a mixed question of fact and law. Whether the employee committed a particular act is a question of fact." *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008) (citation omitted), *review denied* (Minn. Oct. 1, 2008). "But whether the act committed by the employee constitutes employment misconduct is a question of law, which we review de novo." *Id.*

Thompson challenges the ULJ's determination that STS discharged her for employment misconduct. An employee who is discharged from employment because of employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4 (2010). Employment misconduct is defined as "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 a right to reasonably expect of the employee; or (2) a substantial lack of concern for the employment." *Id.*, subd. 6 (2010).

Thompson contends that allegations against her were fabricated because STS was aware of an upcoming hip surgery that would require Thompson to miss work. But, records show that Thompson consistently fell behind on her charting; charting was not

individualized when it was completed; before the chart audit, Thompson had received multiple warnings and feedback regarding her charting practices; and during the audit, many of Thompson's charts still remained incomplete or were submitted after STS's prescribed timeline. The record shows that allegations of employment misconduct were not fabricated.

Thompson argues that because she did not deliberately or intentionally engage in any wrongdoing, this court should reverse the ULJ's decision. Generally, refusal to abide by an employer's reasonable policies and requests amounts to disqualifying misconduct. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). STS is required to comply with state regulations regarding charting for patients. The state sets the minimum guidelines that STS must follow. STS's policy is stricter than the guidelines set by the state. STS requires a counselor to complete the chart entries within ten business days to assure the counseling session is still fresh in the counselor's mind and to proactively conduct patient interventions. STS's policy is not unreasonable.

Moreover, STS accommodated Thompson's tardy charting practices on numerous occasions. When Thompson fell behind on charting because of illness and personal issues, STS accommodated her and worked with her limited schedule. In April 2011, STS received a citation from the Minnesota Department of Human Services. This citation prompted an internal chart audit. Thompson was notified that she was behind on her charts. Thompson notified management that she had been sick but the charts would be complete by April 8. STS gave Thompson four weeks to comply. In May, a spot audit revealed that Thompson's records were still incomplete, and STS gave Thompson

an additional four weeks to comply with STS policies. When a follow-up full audit was completed on June 24, Thompson's files still did not comply with STS policies. STS was neither inflexible nor unreasonable.

Thompson also received warnings because her charts were not individualized and lacked required elements. When the treatment plans for Thompson's 50 clients were audited on June 24, it was discovered that: (1) all 50 of the treatment plans were the same and not individualized; (2) the case notes for all 50 patients were out of compliance because they did not state the vulnerable-adult status as required; (3) the case notes for all 50 patients were out of compliance because they did not state the suicidal ideation as required; and (4) for three consecutive months, the case notes and counseling sessions were copied and pasted from one month to the next without any changes.

Thompson's actions constituted both a serious violation of the employer's policies and a substantial lack of concern for her employment. Despite being given multiple chances to update her charts, Thompson did not comply with STS's policies. Additionally, Thompson's actions had a negative impact on both her employer and patients: STS received a citation from the state, while Thompson's late charting habits caused her clients to miss interventions for positive drug screenings.

Thompson also seems to argue that STS was required to conduct a meeting with Thompson after she received a warning, in order to reevaluate her work. Thompson claims that because STS never conducted these meetings, STS violated its own policies. But, the proper "focus of the inquiry is the employee's conduct, not that of the employer." *Stagg v. Vintage Place Inc.*, 769 N.W.2d 312, 316 (Minn. 2011). The record

shows that Thompson's work was evaluated on multiple occasions, and she was given specific instructions on how to comply during the April 2011 audit. Moreover, Thompson was employed with STS for approximately four years, so she was aware of STS's policies and job responsibilities but still did not comply with them.

Affirmed.