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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1873**

Susan I. Plecko,
Relator,

vs.

St. John's Lutheran Hospital Assn.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 9, 2012
Affirmed
Muehlberg, Judge***

Department of Employment and Economic Development
File No. 27871560-3

Susan I. Plecko, Houlton, Wisconsin (pro se relator)

Ryan A. Olson, Felhaber, Larson, Fenlon & Vogt, P.A., Minneapolis, MN (for
respondent employer)

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

Considered and decided by Halbrooks, Presiding Judge; Bjorkman, 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UNPUBLISHED OPINION

MUEHLBERG, Judge

Relator challenges the decision of an unemployment-law judge that she was discharged for misconduct and ineligible for unemployment benefits, arguing that the evidence does not support the finding that she left her shift without permission, and that she is not an average reasonable person because she is disabled. We affirm.

FACTS

Relator Susan I. Plecko has multiple sclerosis (MS), the symptoms of which cause her to feel stress and depression. On May 10, 2011, relator, who is a registered nurse, went to work at respondent St. John's Lutheran Hospital feeling depressed because of nonwork-related issues. Initially, she felt that she would be able to care for her patients, but she went "over the edge" and began crying after being told that she would be seeing a child patient. Relator left her job mid-shift because she felt stress.

Following a meeting on May 17 to determine why relator left, she was discharged because she failed to follow the employer's policy of obtaining permission to leave mid-shift. Relator established an account with respondent Minnesota Department of Employment and Economic Development. But it was soon determined that relator was discharged for employment misconduct and ineligible for unemployment benefits. Relator appealed and an unemployment-law judge (ULJ) held a hearing.

At the hearing, relator acknowledged that she was required to obtain permission prior to leaving mid-shift. The hospital's written policy, in force since 1988, states that: "If an employee becomes ill on duty, he/she must notify unit Charge Nurse, Staffing

Office and/or Administrative Nursing Supervisor.” Relator testified that she informed her supervisor, Mary Jo LaBorde, and her manager, Elizabeth Markham, that she was leaving. Relator stated that she told LaBorde: “I have to go home, I hate being here right now.” LaBorde asked: “Is there anything I can do for you?” Relator interpreted that statement as: “Go home.” Relator also told Markham that she had to go home, she could not be there, and she hated being there. Markham did not respond; relator interpreted her silence as: “I guess you probably should go home.” But in a written statement, LaBorde stated that she did not feel that she gave relator approval to leave and relator “was not looking for [her] approval,” and that LaBorde felt that she could not stop relator.

Relator submitted a sworn statement from her treating neurologist stating that relator is diagnosed with MS, the effects of which include an “inability to handle stress appropriately” and “occasional oppositional or inappropriate behavior.” Relator’s neurologist stated that relator’s actions on May 10 were “usual and not remarkable for a patient afflicted by MS.” But the hospital’s human-resources director testified that relator never reported that she had to leave on May 10 because of her MS. The hospital submitted detailed documentation of the meeting on May 17 showing that relator explained that she left because she had a lot of things going on in her life and was upset because Markham “rags on people all day long.” Relator stated that the “straw that broke the camel’s back was when [she] saw that she was going to get a five-year-old [patient].” Relator claimed that she does not like children and she does not like to act “perky.”

The ULJ determined that relator was discharged for employment misconduct and is, therefore, ineligible to receive unemployment benefits. The ULJ reached this determination after finding that relator was discharged for leaving work without permission and that “[t]he preponderance of the evidence shows that [relator] did not have a good faith basis to believe that she had been given permission to go home” when she merely told her supervisors that she hated it there and needed to go home. The ULJ determined that the supervisors’ responses would not cause a reasonable employee to believe that she had permission to leave. The ULJ found that the testimony of the supervisors was “more credible as it was based on notes taken at the time of the incident.” The ULJ also determined that a preponderance of the evidence did not support relator’s claim that she left work because of her MS because even if she felt stress due to her MS that was not a reason for failing to ask permission to leave. The ULJ determined that the medical opinion that relator’s actions were “usual and not remarkable for a patient afflicted by MS” does not indicate that failing to obtain permission to leave is a consequence of her condition. This certiorari review follows.

D E C I S I O N

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

“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.” Minn. Stat. § 268.095, subd. 6(a) (2010).

Whether an employee engaged in employment misconduct presents a mixed question of fact and law. Whether the employee committed a particular act is an issue of fact. This court views questions of fact in the light most favorable to the decision of the ULJ and gives deference to the ULJ’s credibility determinations. . . . Whether the facts constitute employment misconduct is a question of law, which this court reviews de novo.

Cunningham v. Wal-Mart Assocs. Inc., 809 N.W.2d 231, 235 (Minn. App. 2011) (citations omitted). This court will not disturb the ULJ’s factual findings when the evidence substantially sustains them. Minn. Stat. § 268.105, subd. 7(d)(5); *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008).

The ULJ determined that relator was discharged for employment misconduct because she left work without permission, in violation of the employer’s policy manual. The hospital has a procedure that an employee must follow when seeking to leave mid-shift, which is in place to ensure that patients receive appropriate care. Relator was aware of the policy, but she did not get permission to leave in the middle of her shift. An

employer has the right to create and enforce reasonable attendance policies, and an employee's refusal to abide by these policies is generally considered employment misconduct. *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 28 (Minn. App. 2007); *see also Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 525 (Minn. 1989) (stating that "if there is one unique area of employment law where strict compliance with protocol and militarylike discipline is required, it is in the medical field"). Thus, relator was aware of the employer's reasonable policy and failed to abide by it. *See Colburn v. Pine Portage Madden Bros. Inc.*, 346 N.W.2d 159, 161 (Minn.1984) (stating that a single incident where an employee deliberately chooses a course of action adverse to the employer can constitute misconduct).

Relator claims that her supervisors gave her permission to leave when she told them that she needed to go home and she hated it there. But relator did not ask permission. She stated that she was leaving. And both supervisors denied that she was granted permission to leave. *See Del Dee Foods, Inc. v. Miller*, 390 N.W.2d 415, 417 (Minn. App. 1986) (holding that even a single work absence without permission may constitute misconduct); *Little v. Larson Bus Serv.*, 352 N.W.2d 813, 815 (Minn. App. 1984) (stating that an employer has a reasonable expectation that an employee will work scheduled hours). The ULJ determined that the supervisors were more credible than relator because they had detailed notes from the meeting held to determine why relator had left work.

Relator emphasizes that her actions were caused by her MS, and claims that the ULJ misinterpreted MS to be a purely physical condition when it is also a mental

condition. But the ULJ did not ignore or reject medical evidence regarding the symptoms of MS; rather, the ULJ determined that while MS could have caused relator to feel stress that pushed her to a point where she had to leave, relator's MS did not cause her to fail to abide by the hospital's policy and ask for permission to leave. Relator failed to provide any evidence that her MS caused her to fail to obtain permission to leave mid-shift. The ULJ's decision that relator was discharged for employment misconduct is supported by the record; therefore, we affirm the ULJ's determination that relator is ineligible for unemployment benefits.

Affirmed.