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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2277**

Karen A. Matoke,
Relator,

vs.

Restart, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed September 17, 2012
Affirmed
Kalitowski, Judge**

Department of Employment and Economic Development
File No. 28372701-3

Peter B. Knapp, Annie M. Kopplin (certified student attorney), William Mitchell Law
Clinic, St. Paul, Minnesota (for relator)

Restart, Inc., St. Louis, Missouri (respondent)

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

Considered and decided by Kalitowski, Presiding Judge; Cleary, 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UNPUBLISHED OPINION

KALITOWSKI, Judge

In this unemployment-benefits appeal, relator Karen Matoke challenges the decision of the unemployment-law judge (ULJ) that she is ineligible for benefits, arguing that the ULJ erred by concluding that she was discharged for employment misconduct because her actions did not violate company policies, were reasonable, were made in good faith, or were simply unsatisfactory. We affirm.

DECISION

Matoke worked for respondent Restart Inc. from October 29, 2000, until August 1, 2011, as a home health aide in a group home for residents with traumatic brain injuries. Matoke's job responsibilities included administering medications to residents and documenting the medications administered in the medication administration record (the MAR). Restart's policy is to discharge workers who accrue five medication errors. Matoke was warned after each of four medication errors between June 2010 and July 2011. Matoke was discharged after she committed a fifth medication error during a shift on July 22, 2011. A memorandum pertaining to the error explained that Matoke had failed to document any of the medications she administered during the July 22 shift.

Matoke applied for unemployment benefits, and respondent Minnesota Department of Employment and Economic Development (DEED) determined that she was ineligible because she was discharged for employment misconduct. Matoke appealed, and an appeal hearing was held. At the hearing, Matoke disputed the facts of certain of her prior medication errors and admitted that she had committed others. With

respect to the July 22 shift, Matoke testified that she had been too busy assisting residents to document medications in the MAR as she administered them. She explained that she had intended to complete the MAR by the end of her shift, but that a nurse checked the MAR before her shift had ended and documented a medication error. The ULJ concluded that Matoke had been discharged for employment misconduct.

Matoke challenges the ULJ's conclusion that she committed misconduct. When reviewing a ULJ's decision of whether to award unemployment benefits, we may remand, reverse, or modify the decision if the relator's substantial rights were prejudiced because the factual findings are unsupported by substantial evidence or because the decision is affected by an error of law, is made upon unlawful procedure, or is arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d)(3)-(6) (2010).

An employee discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). Employment misconduct includes "intentional, negligent, or indifferent conduct . . . 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). But simple unsatisfactory conduct, conduct an average reasonable employee would have engaged in under the circumstances, or good faith errors in judgment where judgment was required do not constitute employment misconduct. *Id.*, subd. 6(b)(3), (4), (6).

Whether an employee engaged in employment misconduct is a mixed question of law and fact. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

Whether the employee committed a particular act is a question of fact, and we view the ULJ's findings of fact in the light most favorable to the decision. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether the act committed by the employee constitutes employment misconduct is a question of law, which we review de novo. *Id.*

On appeal, Matoke's argument focuses on whether her decision to wait until the end of her July 22 shift to complete the MAR constitutes employment misconduct. She argues that the delay in recording does not rise to the level of misconduct because it is not prohibited by Restart's medication-documentation policy. This argument implicitly challenges the ULJ's finding that "Restart's policy is for employees to document medications as the medications are administered." We agree that the evidence does not clearly demonstrate that such a formal policy existed, but the record does establish that Restart communicated an expectation to that effect. The ULJ specifically asked Matoke whether there is "an expectation that you document the medication as you go," and she replied, "Yes." Matoke's former supervisor, Michelle Ross, who testified on Matoke's behalf, also agreed that "[i]t is the procedure for workers to document medication as they administer the medication." And when the ULJ asked Ross whether employees are "allowed" to wait until the end of their shift, Ross replied, "No, not to, they document the meds right at the same time, but they have the whole shift to make sure."

An employee need not violate an express "policy" for his or her conduct to be prohibited. *Brown v. Nat'l Am. Univ.*, 686 N.W.2d 329, 333 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). "The focus of the definition of misconduct is on

‘standards of behavior the employer has the right to reasonably expect of the employee.’” *Id.* (quoting Minn. Stat. § 268.095, subd. 6(a)(1) (Supp. 2003)). Restart established a standard of conduct for its employees to provide accurate and timely documentation of medications, which included documenting medications as they are administered. This standard is reasonable in the field of health care, where “strict compliance with protocol and militarylike discipline is required” because a breach of reasonable policies could expose patients to “serious harm.” *Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 525 (Minn. 1989). Matoke violated Restart’s reasonable standard by failing to record any of the medications she administered until the end of her shift.

Moreover, the ULJ found that Matoke was discharged for committing five medication errors, not simply because of her failure to document medications during the July 22 shift. *See Schmidgall*, 644 N.W.2d at 806-07 (stating that an employee’s “multiple violations of the same rule involving warnings or progressive discipline” constitutes employment misconduct). The record reflects that Matoke received training in how to properly document medications in the MAR, and the ULJ found that Restart warned and corrected Matoke numerous times in response to her medication errors. Restart also specifically warned Matoke that her failure to comply with the medication-documentation policy would result in termination. Thus, the record demonstrates that Matoke was discharged based on her entire work record. *See Barstow v. Honeywell, Inc.*, 396 N.W.2d 714, 716 (Minn. App. 1986) (providing that an employee’s entire work record, including “behavior unrelated in time or tenor,” may be considered to determine whether misconduct has occurred).

Matoke also argues that an average reasonable employee would have delayed completion of the MAR until the end of the July 22 shift because she was too busy to document medications as they were administered. *See* Minn. Stat. § 268.095, subd. 6(b)(4) (stating that “conduct an average reasonable employee would have engaged in under the circumstances” is not employment misconduct). But the ULJ found that Matoke’s testimony “was not credible because it was evasive, inconsistent, and provided an illogical sequence of events.” We defer to the ULJ’s credibility determinations when they are supported by substantial evidence. *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 531-32 (Minn. App. 2007). Here, the ULJ’s credibility determination is supported by Matoke’s testimony.

Finally, Matoke argues that her failure to document medications on July 22 was either simple unsatisfactory conduct or a good faith error in judgment and does not rise to the level of employment misconduct. *See* Minn. Stat. § 268.095, subd. 6(b)(3), (6). But the repeated nature of Matoke’s errors undermines this argument. Moreover, there can be no mere good faith error in judgment here because Restart’s expectation that its employees document medications as they are administered does not call for an exercise of judgment.

Because Matoke committed multiple medication errors, her conduct is a serious violation of the standards of behavior that Restart has the right to reasonably expect, and displays a substantial lack of concern for the employment. The ULJ did not err by concluding that Matoke was ineligible for benefits.

Affirmed.