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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0895**

Tim E. Jensen,
Relator,

vs.

Narveson Management, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed March 10, 2014
Affirmed
Connolly, Judge**

Department of Employment and Economic Development
File No. 30692034-3

Tim E. Jensen, Nisswa, Minnesota (pro se relator)

Kenneth H. Bayliss, III, Quinlivan & Hughes, P.A., St. Cloud, Minnesota (for
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St. Paul, Minnesota (for respondent department)

Considered and decided by Connolly, Presiding Judge; Chutich, Judge; and
Klaphake, Judge.*

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

UNPUBLISHED OPINION

CONNOLLY, Judge

In this certiorari appeal, relator challenges the unemployment-law judge's (ULJ) conclusion that he was discharged for employment misconduct and ineligible for unemployment benefits. We affirm.

FACTS

Relator Tim Jensen worked as a maintenance technician at respondent Narveson Management Inc. (NMI) from December 23, 2011 to January 3, 2013. NMI is a property management company that manages resort condominiums.

During his employment with NMI, relator would often complain about his work assignments to his coworkers. When he did not want to perform his assigned duties, relator would call in sick or leave work early. For example, on one occasion, relator called in sick for work but later told a coworker that he called in sick because he did not want to shovel snow at work.

On December 14, 2012, relator attended NMI's holiday party. He appeared to be intoxicated and made disparaging remarks about NMI's president in front of party guests. Relator was scheduled to work the next day, but he did not show up or call his supervisor.

On January 2, 2013, a maintenance administrator gave relator two work assignments. Relator replied, without further explanation, that he would not complete the assigned tasks. The next day, NMI's president met with relator to reprimand him for his behavior. At the meeting, relator told the president that he had pictures of maintenance and safety issues on NMI's property that the company did not know about. Relator

explained that he was going to use the pictures against NMI to protect his employment. The president explained that relator was harming NMI by not repairing or reporting these issues and terminated his employment.

Relator sought unemployment benefits from the Minnesota Department of Employment and Economic Development (DEED). A DEED administrative clerk issued a determination that relator was eligible for unemployment benefits. NMI appealed the determination, and a ULJ conducted a de novo hearing. The ULJ concluded that relator was discharged for employment misconduct and was ineligible for benefits. Relator requested reconsideration and the ULJ affirmed.

D E C I S I O N

Relator argues that the ULJ erred in determining that he is ineligible for unemployment benefits. We disagree. We may modify, reverse, or remand a ULJ's unemployment-benefits determination if relator's substantial rights 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) (2012). We review the ULJ's factual findings in the light most favorable to the decision and defer to the ULJ's credibility determinations. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). "[T]his court will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Id.*

The ULJ found that relator was discharged for misconduct. An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2012). Employee misconduct includes “any 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.” Minn. Stat. § 268.095, subd. 6(a) (2012). “Whether an employee committed employment misconduct is a mixed question of fact and law.” *Peterson*, 753 N.W.2d at 774. Whether an act was committed is a question of fact, but whether the act constitutes employment misconduct is a question of law, which we review de novo. *Id.*

The ULJ found that relator constantly complained about his job, avoided his work duties, insulted NMI’s president, and tried to gain leverage over NMI with photographs he had taken of safety hazards. The ULJ concluded that relator was discharged for employment misconduct because his behavior “showed clearly a serious violation of the standards of behavior the employer has a right to reasonably expect of the employee.”

We conclude that the record substantially supports the ULJ’s findings. All four of NMI’s witnesses testified that relator had a poor attitude about work and that he was unwilling to perform his assigned duties. They all stated that relator failed to show up for work or would leave early when he was assigned tasks that he did not want to complete.

NMI’s president testified that relator was intoxicated when he arrived to the NMI holiday party. Relator was upset that NMI provided employees with only two drink tickets. The president testified that relator approached him and called him a “cheap

f---er” in front of NMI’s clients. Relator confirmed that he was at the holiday party, that he was drinking, and that he failed to go to work the next day because he was involved in a car accident after the party.

An NMI maintenance administrator testified that she gave relator two work assignments on January 2, and that relator refused to complete the requested tasks. Moreover, relator admitted at the hearing that he photographed safety issues at work and that he did not repair these issues even though it was his duty to do so. According to NMI’s president, relator took these pictures to protect his employment.

Relator argues, however, that the ULJ’s decision is not substantially supported by the record because NMI’s witnesses were not credible. We disagree. “Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Bangtson v. Allina Med. Grp.*, 766 N.W.2d 328, 332 (Minn. App. 2009) (quotation omitted). “When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1(c) (2012).

The ULJ determined that relator was not credible for the following reasons: (1) he objected to every exhibit at the beginning of the hearing, (2) he erroneously argued that the employer’s appeal was untimely in an apparent attempt to stop the hearing, (3) he stated that he had never seen the proffered exhibits containing written warnings from his employer, and (4) he aggressively inquired about whether his fingerprints would be found on those documents to prove that he had previously seen them. The ULJ also noted that

relator tried to intimidate the respondent and the ULJ by implying that he would immediately appeal if he received an adverse decision. Because the ULJ set out his reasons for discrediting relator's testimony, we defer to the ULJ's credibility determination. *See Peterson*, 753 N.W.2d at 774.

We conclude that the evidence substantially supports the ULJ's decision that relator's actions demonstrate employment misconduct; the ULJ did not err in determining that relator is ineligible for unemployment benefits. *See* Minn. Stat. § 268.095, subd. 6(a).

Affirmed.