

NO. A08-1587

State of Minnesota
In Court of Appeals

Bradley Bangtson,

Relator,

vs.

Allina Medical Group,

Respondent,

and

Department of Employment and Economic Development,

Respondent.

**RESPONDENT ALLINA MEDICAL GROUP'S
BRIEF AND APPENDIX**

Dennis B. Johnson (#124564)
Gary K. Luloff (#0389057)
CHESTNUT & CAMBRONNE, P.A.
204 North Star Bank Building
4661 Highway 61
White Bear Lake, MN 55110
(651) 653-0990

Attorneys for Relator Bradley Bangtson

Robert L. Bach (#3736)
Jessica M. Marsh (#0388353)
FELHABER, LARSON, FENLON
& VOGT, P.A.
220 South Sixth Street, Suite 2200
Minneapolis, MN 55402
(612) 339-6321

Attorneys for Respondent Allina Medical Group

Lee B. Nelson (#77999)
First National Bank Building
332 Minnesota Street, Suite E200
St. Paul, MN 55101-1351
(651) 282-6216

*Attorneys for Department of Employment and
Economic Development*

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

TABLE OF CONTENTS

TABLE OF AUTHORITIESiii

STATEMENT OF THE ISSUE1

STATEMENT OF THE CASE2

STATEMENT OF THE RELEVANT FACTS3

ARGUMENT5

I. THE ULJ’S CONCLUSION THAT RELATOR WAS DISQUALIFIED FROM RECEIVING UNEMPLOYMENT BENEFITS BECAUSE HE WAS DISCHARGED FOR EMPLOYMENT MISCONDUCT SHOULD BE AFFIRMED5

A. Standard of Review5

B. Relator Was Discharged For the Assault5

a. Notice of Discharge and Discharge Are Distinct Events6

b. Authorities Cited by Relator Are Inapposite6

c. Relator’s Alternative Theories For How Relator’s Employment Ended Are Not Properly Before this Court9

C. Even if Relator Was Discharged For Diverting Narcotics He Still Would Not Be Entitled to Benefits10

a. Relator Does Not Qualify For the Exception10

b. Even if Relator Qualifies For the Exception, the Exception to the Exception Precludes an Award of Benefits12

c. It is Appropriate For This Court to Affirm the ULJ on This Basis13

D. Public Policy Does Not Support Awarding Benefits Here14

CONCLUSION15
INDEX TO RESPONDENT'S APPENDIX16

TABLE OF AUTHORITIES

CASES

<u>Fiskewold v. H.M. Smyth Co., Inc.</u> , 440 N.W.2d 164 (Minn. App. 1989)	6
<u>Kalberg v. Park & Recreation Bd. of Minneapolis</u> , 563 N.W.2d 275 (Minn. App. 1997).....	11, 12
<u>Liebsch v. Abbott</u> , 265 Minn. 447, 457, 122 N.W.2d 578 (1963)	13
<u>Melina v. Chapman</u> , 327 N.W.2d 19 (Minn. 1982)	5, 11
<u>Moore Assoc., LLC v. Comm’r of Econ. Sec.</u> , 545 N.W.2d 389, 393 (Minn. App. 1996)	7, 8
<u>Navarre v. South Washington County Schools</u> , 652 N.W.2d 9 (Minn. App. 2002)	7
<u>Neid v. Tassie’s Bakery</u> , 219 Minn. 272, 17 N.W.2d 357 (1945)	6, 7
<u>Nichols v. Reliant Eng’g & Mfg., Inc.</u> , 720 N.W.2d 590 (Minn. App. 2006)	9
<u>N. States Power v. City of Granite Falls</u> , 463 N.W.2d 541 (Minn. App. 1990)	13
<u>Nyberg v. R.N. Cardozo & Brother, Inc.</u> , 243 Minn. 361, 67 N.W.2d 821 (1954)	13
<u>Peterson v. Nw. Airlines Inc.</u> , 753 N.W.2d 771 (2008)	11
<u>Skarhus v. Davanni’s Inc.</u> , 721 N.W.2d 340 (Minn. App. 2006)	5, 9, 11
<u>Thiele v. Stich</u> , 425 N.W.2d 580 (Minn. 1988)	9
<u>Turner v. IDS Financial Servs., Inc.</u> , 471 N.W.2d 105 (Minn. 1991)	6
<u>Williams v. Meridian Services Inc.</u> , 2007 WL 1674388, No. A06-1112 (Minn. App. June 12, 2007)	7

STATUTES

Minn. Stat. § 268.03 (2008)	14
Minn. Stat. § 268.069 (2008)	14

Minn. Stat. § 268.085 (2008)8
Minn. Stat. § 268.095 (2008)2, 7, 9, 10, 11, 12, 14
Minn. Stat. § 268.105 (2008)2, 5, 9

RULES

Minn. R. Civ. App. P. 1152

STATEMENT OF THE ISSUE

- I. Whether the Unemployment Law Judge's (ULJ) determination that Relator was terminated for employment misconduct by Respondent Allina and, thus, is disqualified from receiving unemployment benefits is reasonably supported by the record.

The ULJ concluded that Relator was disqualified.

Most Apposite Authorities:

Minn. Stat. § 268.095, subd. 6 (2008)

Minn. Stat. § 268.105, subd. 7(d) (2008)

STATEMENT OF THE CASE

This certiorari appeal follows from the determination that Dr. Bradley Bangtson (“Relator”) is disqualified from receiving unemployment benefits because he was discharged for employment misconduct within the meaning of Minn. Stat. § 268.095, subd. 6 (2008).

On October 5, 2007 a Minnesota Department of Employment and Economic Development (“DEED”) adjudicator made an initial determination that Relator was qualified for unemployment benefits. Tr. at 6.¹ His former employer, Allina Medical Group (“Allina”), appealed that determination. Tr. at 6. On April 18, 2008, following a three-day telephonic hearing held on December 18, 2007, February 29, 2008, and April 11, 2008, Unemployment Law Judge (“ULJ”) Kirsten Christopherson determined that Relator was not qualified for unemployment benefits because he was discharged for employment misconduct. Rel. App. at 2-4.² On May 12, 2008 Relator filed a request for reconsideration with the ULJ, which the ULJ denied in its entirety on August 12, 2008. Rel. App. at 6-7. Relator filed this certiorari appeal on September 11, 2008 pursuant to Minn. Stat. § 268.105, subd. 7(a) (2008) and Minn. R. Civ. App. P. 115. Rel. App. at 16-17.

¹ “Tr.” refers to the Transcript of the hearing before the ULJ.

² “Rel. App.” refers to the Relator’s Appendix.

STATEMENT OF THE RELEVANT FACTS

A. Background

Cambridge Medical Center (“CMC”) is a regional health care facility providing comprehensive health care services to more than 30,000 residents in Isanti County. The medical center is comprised of a large multi-specialty clinic and an 86-bed hospital located on one large campus. Cambridge Medical Center is a part of Allina Hospitals & Clinics (“Allina”), a family of hospitals, clinics, and care services in Minnesota and western Wisconsin.

Dr. Bradley Bangston (“Relator”) was employed by Allina from December 1, 2002 until July 19, 2007 as an anesthesiologist and director of anesthesia services. Rel. App. at 2.

B. Relator Diverted Narcotics

A staff member at CMC brought it to Allina’s attention that Relator was diverting narcotics. Tr. at 17, 97. Following some investigation, on April 20, 2007 Dr. Bangston admitted to Dennis Doran, CMC president, and Dr. Dale Berry, lead physician at CMC, that he had diverted narcotics and administered them to himself on three separate occasions in April of 2007 “because he was under stress with some personal problem.” Tr. at 24, 57-58. Relator was placed on a paid leave of absence, during which he underwent treatment at Hazelden from May 3-June 2, 2007. Rel. App. at 2-3.

C. Relator Notified of Future Termination

On July 12, 2007 an executive operations meeting was held, wherein all of the directors, the president, and the lead physicians of CMC decided that Relator could not

return to work for Allina. Tr. at 27-28. On July 16, 2007 Relator met with LeeAnn Vitalis, director of Human Resources, and Doran in Doran's office to present Relator with a Separation and Release Agreement ("Agreement"). Tr. at 101, 31. In pertinent part the Agreement provided that "Employee and Employer acknowledge and confirm that Employee's employment will terminate on July 20, 2007 ('Date of Termination')." Rel. App. at 12.

D. Relator Assaulted the President of CMC

Dr. Bangtson told Doran and Vitalis that he wished to collect his belongings from his office. Tr. at 22-23. After the meeting, Doran escorted Relator to his office. Tr. at 36-37. After packing several items, Relator punched a mirror, breaking the glass, and told Doran "that should have been your face." Tr. at 37. After that incident Doran told Relator "it's time to leave" Relator grabbed Doran by the throat and pushed him into a coat hook. Tr. at 37. Relator then fled the hospital on foot as Doran attempted to call security for assistance. Tr. at 37-38.

E. Relator Was Discharged for Assault

By letter dated July 18, 2007, Allina informed Relator "that due to [his] assault of Dennis Doran at Cambridge Medical Center on July 16, your employment effectively ended on that day." Resp. App. at 1 (DEED Ex. 6).³ Relator received this letter on or about July 19, 2007. Rel. App. at 3.

³ "Resp. App." refers to Respondent Allina's Appendix. "DEED Ex. X" refers to exhibits introduced at the hearing before the ULJ.

ARGUMENT

I. THE ULJ'S CONCLUSION THAT RELATOR WAS DISQUALIFIED FROM RECEIVING BENEFITS BECAUSE HE WAS DISCHARGED FOR EMPLOYMENT MISCONDUCT SHOULD BE AFFIRMED

A. Standard of Review

This court affirms a ULJ's benefits determination if it is reasonably supported by substantial evidence in the record, not arbitrary or capricious, and unaffected by any error of law. Minn. Stat. § 268.105, subd. 7(d) (2008). This court views the ULJ's findings in the light most favorable to the decision and will not disturb them if they are sufficiently supported by the record. Skarhus v. Davanni's Inc., 721 N.W.2d 340, 344 (Minn. App. 2006). For the reasons set forth below, the ULJ's conclusion that Relator was disqualified from receiving benefits because he was discharged for employment misconduct is supported by substantial evidence and is legally correct. Therefore, the ULJ's determination should be affirmed in its entirety.

B. Relator Was Discharged For the Assault⁴

Contrary to Relator's argument, Allina did not fire him twice. Relator argues that "[a]t the moment [he] was told he no longer had a job ... [he] was 'totally fired.'" Rel. Br. at 5.⁵ But Relator was notified on July 16 that, pursuant to the Separation and Release Agreement ("Agreement"), continuing employment was available to him until July 20. Rel. App. at 3; Tr. at 104. Because Relator had not been discharged at the time

⁴ Relator has waived any argument regarding whether the assault constituted disqualifying misconduct. See Melina v. Chapman, 327 N.W.2d 19, 20 (Minn. 1982) (noting issues not briefed on appeal are waived).

⁵ "Rel. Br." refers to the Relator's Brief.

of the assault, he was not discharged again. Rather, and more precisely, because he assaulted the President of CMC Relator was discharged early.

a. Notice of Discharge and Discharge Are Distinct Events

A communication regarding the end-date of employment is not, in and of itself, a discharge. To offer one illustrative example, an applicant who quit his job once he learned that he would be discharged two days later was entitled to unemployment benefits because his quit was considered involuntary. Fiskewold v. H.M. Smyth Co., Inc., 440 N.W.2d 164, 165 (Minn. App. 1989). If employees were automatically discharged upon notice of termination, it would be impossible to quit. Rather, it follows logically that the date of notice of termination and the date of termination are distinct events, even if the termination is a certainty. *See, e.g.,* Turner v. IDS Financial Servs., Inc., 471 N.W.2d 105, 106 (Minn. 1991) (determining whether the statute of limitations for discrimination claims begins to run “on the Date of Termination or the Date of Notice of Termination”). In Turner the court distinguished between the notice of termination and the actual termination, even though in the interim period he “never returned to his office or performed any work.” Id.

b. Authorities Cited by Relator Are Inapposite

The cases Relator cites in support of his argument that he was fired as of July 16 fail to eliminate the distinction between notice of termination and termination. Relator cites Neid v. Tassie’s Bakery, 219 Minn. 272, 274, 17 N.W.2d 357, 358 (1945) for the proposition that: “A discharge presumptively means that the employer no longer needs or desires the employee’s services; that he is done with him; and that all contract relations

between them are at an end.” Rel. Br. at 12. Neid involved a claim for wrongful discharge, where the court was charged with determining if a discharge had occurred. Thus, Neid does not apply to this context. *See also Navarre v. South Washington County Schools*, 652 N.W.2d 9, 32 (Minn. App. 2002) (quoting this portion of Neid when analyzing whether a constructive discharge had occurred). Moreover, even if Neid was relevant to this determination, all contractual relations between Relator and Allina were not at an end prior to the July 16 assault. Relator’s last check was issued July 20 for the pay period July 14-27. Tr. at 102-03.

Similarly, Minn. Stat. § 268.095, subd. 5(a) (2008), which states: “A discharge from employment occurs when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity” has been applied to determine if an employee has been discharged, not to resolve a challenge involving precisely when an undisputed discharge occurred. *See, e.g., Williams v. Meridian Services Inc.*, 2007 WL 1674388 at *2, No. A06-1112 (Minn. App. June 12, 2007) (included in Resp. App. at 3-5) (utilizing the statutory section to determine whether the applicant quit or was discharged).

Relator cites Moore Assoc., LLC v. Comm’r of Econ. Sec., 545 N.W.2d 389, 393 (Minn. App. 1996) for the proposition that he was terminated by Allina on July 16 because, at that point, “Allina had no more right to control Dr. Bangtson” and that “[t]he labels that the parties give themselves is not determinative.” Rel. Br. at 13. This case is inapposite to the question posed here. The court in Moore was charged with determining whether certain unemployment-benefit applicants were employees or independent

contractors. Id. at 391. Whether or not an individual is an employee or an independent contractor turns upon the employer's right to control that individual. Id. at 393. Thus, when Allina lost its "right to control" Relator is irrelevant to the question of when Relator was discharged: there is no dispute that he was an employee of Allina. Additionally, Moore's statement, quoted by Relator, that "[t]he labels that the parties give themselves is not determinative" does not negate the import of the Agreement. Rel. Br. at 13. Again, put in its proper context, this statement in Moore noted that the existence of an independent-contractor agreement is not dispositive to a dispute regarding whether an individual was an employee or an independent contractor. 545 N.W.2d at 392-93.

Relator's argument that Allina could "choos[e] a date far in the future, delaying [Relator's] eligibility for benefits indefinitely" is unavailing because it is inaccurate to state that he "would not be paid." Rel. Br. at 14. The Agreement provided not only that Relator's employment would terminate July 20, but that he would be paid a lump sum for the period of June 2 through July 20. Rel. App. at 12, *see* II.1. and II.2.a. Relator would have been ineligible to receive benefits for any week in which he received severance pay; if severance pay is paid in a lump sum, "that sum shall be divided by the applicant's last level of regular weekly pay from the employer." Minn. Stat. § 268.085, subd. 3(a)(2), (b)(2) (2008). Although Relator may argue that this analysis hinges upon Relator's acceptance of the Agreement, the crucial inquiry here is when employment was no longer available to him with Allina. That date was July 20.

c. Relator's Alternative Theories For How Relator's Employment Ended Are Not Properly Before this Court

Relator offers several alternative theories, not raised below, regarding the end of his employment with Allina. Relator argues that he was discharged on his 31st day of unpaid leave. Rel. Br. at 14-15 n.4. Relator also argues that his request to clean out his office might be characterized as a quit, in which case his assault of Doran would be irrelevant to a benefits determination. Rel. Br. at 21 n.9. These newly developed theories are not properly before this court. See Thiele v. Stich, 425 N.W.2d 580, 582 (Minn. 1988); see also Rel. App. at 2 (stating that the sole issue before the ULJ was “[w]hether the applicant was discharged because of employment misconduct”). Moreover, if considered, neither theory would result in a benefit award for Relator.

“A suspension from employment without pay of more than 30 calendar days shall be considered a discharge.” Minn. Stat. § 268.095, subd. 5. For the reasons discussed in Section C below, if the extended leave caused the discharge Relator would still not be entitled to benefits because it was the result of disqualifying employment misconduct.

The record does not support Relator's suggestion that he may have quit his employment. Whether an individual quit his employment or was discharged is a question of fact, Nichols v. Reliant Eng'g & Mfg., Inc., 720 N.W.2d 590, 594 (Minn. App. 2006), which must be viewed in the light most favorable to ULJ's decision. Skarhus, 721 N.W.2d at 344. The ULJ's factual findings will not be disturbed when substantially sustained by the evidence. Minn.Stat. § 268.105, subd. 7(d)(5). There is substantial evidence in the record that Relator was discharged, most prominently Relator's initial

benefits application, which is a form labeled “Applicant Discharge” and does not address quit situations. Resp. App. at 2, *see* bottom left corner (DEED Ex. 3).

C. Even if Relator Was Discharged For Diverting Narcotics He Still Would Not Be Entitled to Benefits

Even if this court is persuaded that Relator was discharged prior to the assault Allina must clarify that, under these circumstances, Relator was never entitled to receive unemployment benefits. In an attempt to characterize his disqualification as a “windfall” to Allina, Relator asserts that “Dr. Bangtson’s actions that led to his initial leave would not be considered disqualifying misconduct under the statute as there is an exception for “[c]onduct that was a direct result of the applicant’s chemical dependency.”” Rel. Br. at 3 n.1 (quoting Minn. Stat. § 268.095, subd. 6(b) (2008)), Rel. Br. at 16. This exception is inapplicable here. Regardless of whether Relator was discharged for diverting narcotics or for assault he is disqualified from receiving unemployment benefits.

a. Relator Does Not Qualify For the Exception

Relator’s own testimony establishes that diverting narcotics was not the direct result of chemical dependency. Rather, he explains he did so because:

My mom’s dying and I’m not thinking well, I’m making poor decisions, I haven’t slept for the last three, four nights.... [M]y sleeping medication that I received from Dr. Olson ran out, he was on medical leave, and after three nights of not being able to sleep at all, not even for a minute, I took medication. I took garbage medication, medication that was destined for the garbage, took it home, and administered it to myself that evening. And I did that like on every third to fourth night, times three.

Tr. at 57-58. Thus, Relator's diversion of narcotics, according to him, was a direct result of insomnia and personal stress, not of any chemical dependency.

Moreover, Relator did not establish that he was chemically dependent. He testified that "[he] was diagnosed as, you know, drug abuse.... Drug abuse. Not drug addiction but drug abuse.... Or inappropriate drug intake. And also significant anxiety and significant agitated depression." Tr. at 63-64. This court recently rejected applying the chemical-dependency exception in a similar context. In Peterson v. Nw. Airlines Inc., 753 N.W.2d 771, 776 (2008), *review denied* (Minn. Oct. 1, 2008), it was held that this exception was inapplicable where the "[R]elator was not diagnosed as chemically dependent before or after [the employment misconduct]." This court noted: "[R]elator provides no formal diagnosis, or other evidence, that establishes that he is chemically dependent," finding it persuasive that Relator had testified he was an "abuser" rather than chemically dependent. Id. at 777. Thus, as in Peterson, Relator is disqualified from receiving unemployment benefits because he failed to establish chemical dependency.⁶

Relator cites Kalberg v. Park & Recreation Bd. of Minneapolis, 563 N.W.2d 275, 277-78 (Minn. App. 1997) in support of his argument that it would be appropriate to apply the chemical-dependency exception here. Resp. Br. at 8. This case is

⁶ Although not argued by Relator (who, thus, has waived such argument *see Melina*, 327 N.W.2d at 20) the single-incident exception would not apply. "[A] single incident that does not have a significant adverse impact on the employer" is not considered employment misconduct. Minn. Stat. § 268.095, subd. 6(a) (2008). But Relator admitted to diverting narcotics on three separate occasions. Tr. at 57-58. And, had it been a single incident, this particular misconduct had a significant adverse impact on Allina because of the resulting loss of trust. *See Skarhus*, 721 N.W.2d at 344 (holding that an employee's single incident of theft had a significant adverse impact on her employer when that act eliminated her employer's ability to entrust her with the essential functions of the job).

distinguishable on its facts. Kalberg involved an employee with “a history of cocaine addiction” and, at the benefits hearing, “[R]elator offered undisputed testimony that his [employment misconduct] was due to his relapse into chemical dependency.” 563 N.W.2d at 276. Again, and based on the evidence he provided, Relator’s situation is akin to the mere “abuser” of chemicals found in Peterson, discussed supra.

b. Even if Relator Qualifies For the Exception, the Exception to the Exception Precludes an Award of Benefits

Alternatively, assuming arguendo that diverting narcotics was the “direct result” of Relator’s chemical dependency, Minn. Stat. § 268.095, subd. 6(b) goes on to specify that the exception applies “unless the applicant was previously diagnosed chemically dependent or had treatment for chemical dependency, and since that diagnosis or treatment has failed to make consistent efforts to control the chemical dependency.” (Emphasis added). Relator had previously undergone treatment at Hazelden. Tr. at 60-61. Relator testified that “[m]ost, you know people with chemical problems relapse when they stop working their program, as I did. I stopped working my program, going to AA, eight, nine months before I relapsed.” Tr. at 68. Additionally, in his application for unemployment benefits, Relator explained he was discharged because “the Executive committee could not trust me after my relapse”; the incident causing his discharge occurred because “[he] relapsed”; that “[r]elapse is part of addiction”; and that he has a

history “of being an alcoholic.” Resp. App. at 2 (DEED Ex. 3). Thus, the exception is inapplicable.⁷

c. It is Appropriate For This Court to Affirm the ULJ on This Basis

Although this argument was not addressed by the ULJ in her opinion, this court may affirm her decision on the basis that Relator’s diversion of narcotics constituted disqualifying employment misconduct. See Liebsch v. Abbott, 265 Minn. 447, 457, 122 N.W.2d 578, 585 (1963) (noting an appellate court is obligated to uphold a lower court’s decision on an adequate alternative ground); N. States Power v. City of Granite Falls, 463 N.W.2d 541, 543 (Minn. App. 1990) (same), *review denied* (Minn. Jan. 14, 1991). Lastly, Relator’s assertion that this “has not been argued” is contrary to the record. Rel. Br. at 3. Counsel for Allina argued at some length to the ULJ at the hearing that either incident of misconduct would be disqualifying:

Now if the Court doesn’t believe that [the discharge occurred following the assault] ... we need to look at the reasons for the decision that was made on July 12 but not yet communicated till July 16, and that gets back to the incident where Dr. Bangtson misappropriated drugs from the clinic. Either way, he is disqualified for misconduct. Either the decision was made because he misappropriated drugs or the decision was made because he assaulted Mr. Doran. Either way, it’s misconduct. Either way, he then is disqualified for benefits.

Tr. at 119.

⁷ It is not necessary to remand this case to a ULJ to determine which alternative compels the conclusion that Relator’s misconduct is not insulated by the chemical-dependency exception. See Nyberg v. R.N. Cardozo & Brother, Inc., 243 Minn. 361, 366, 67 N.W.2d 821, 824 (1954) (declining to remand a case where additional findings would “serve no useful purpose”).

There are no inequities here: regardless of whether Relator was discharged for (a) diverting narcotics for his own use or (b) assaulting CMC's President he is not entitled to benefits.

D. Public Policy Does Not Support Awarding Benefits Here

Public policy does not support an award of benefits to Relator, although he argues to the contrary at some length. Rel. Br. at 16-17, 22-23. The overarching public policy supporting the institution of unemployment benefits is that “[t]he public good will be promoted by providing workers who are unemployed through no fault of their own a temporary partial wage replacement to assist the unemployed worker to become reemployed.” Minn. Stat. § 268.03, subd. 1 (2008) (emphasis added); *see also* Minn. Stat. § 268.069, subd. 2 (2008) (“There shall be no presumption of entitlement or nonentitlement to unemployment benefits.”). Even if his theory of the case is accepted, Relator is not faultless – he abused Allina’s trust and his position at CMC to divert narcotics for his own use.

Relator attempts to draw an analogy between his assault and a quit because they are both “voluntary act[s].” Rel. Br. at 18-22. There is a clear distinction, however: an assault of CMC’s President is an egregious act of employment misconduct. The legislature has clearly expressed that those who commit acts of employment misconduct should not receive benefits. *See* Minn. Stat. § 268.095, subd. 6. And it is precisely because his misconduct was voluntary that there is no injustice in denying him benefits where his employment “was therefore truncated by, at most, one day.” *See* Rel. Br. at 16 n.5 and accompanying text.

Advising an employee of a future termination date does not give the employee license to commit misconduct in the interim. Certainly many employees, when informed that they will be discharged at a later date, may feel varying degrees of frustration and anger. It cannot, and is not, the policy of this State to award benefits to employees who make the unfortunate decision to commit acts of employment misconduct prior to their discharge.

CONCLUSION

Based upon the foregoing, the ULJ's determination that Relator is disqualified from receiving unemployment benefits should be affirmed.

Dated: December 29, 2008

FELHABER, LARSON, FENLON & VOGT,
P.A.

By: 

Robert L. Bach (#3736)
Jessica M. Marsh (#0388353)
220 South Sixth Street, Suite 2200
Minneapolis, MN 55402
(612) 339-6321

ATTORNEYS FOR ALLINA MEDICAL
GROUP