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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0426**

Ross A. Lasky,
Relator,

vs.

Sandstrom's,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 15, 2008
Affirmed
Klaphake, Judge**

Department of Employment and Economic Development
File No. 16362 06

Ross A. Lasky, 6525 Boyer Road, Saginaw, MN 55779-9710 (pro se relator)

Steven C. Fecker, Jessica L. Durbin, Johnson, Killen & Seiler, P.A., 800 Wells Fargo Center, 230 West Superior Street, Duluth, MN 55802 (for respondent Sandstrom's)

Lee B. Nelson, Katrina I. Gulstad, Minnesota Department of Employment and Economic Development, 1st National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101-1351 (for respondent Department of Employment and Economic Development)

Considered and decided by Klaphake, Judge; Halbrooks, Judge; and Schellhas,
Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Relator Ross A. Lasky was terminated from his sales representative position at Sandstrom's, a wholesale company, on October 6, 2006. After an unemployment law judge (ULJ) determined that relator was properly dismissed for misconduct and therefore not entitled to receive unemployment benefits, relator filed a request for reconsideration, seeking to introduce new evidence to rebut the testimony offered by Sandstrom's. The ULJ denied the request, and relator sought certiorari appeal to this court. Because the record provides substantial evidence to support the ULJ's determination of misconduct, we affirm. We also deny Sandstrom's motion to strike documents in relator's appendix.

DECISION

An employee who is discharged for employment misconduct is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (Supp. 2005). Employment misconduct is defined as “any intentional, negligent, or indifferent conduct, on the job or off the job (1) that displays clearly a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee, or (2) that displays clearly a substantial lack of concern for the employment.” *Id.*, subd. 6(a) (2006). This court may reverse a ULJ's decision if it is based on unlawful procedure, erroneous law, or is unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7 (d)(3)-(5) (2006).

At relator's evidentiary hearing, the ULJ heard conflicting evidence on the reasons for relator's discharge, with both parties providing testimony on their versions of the

facts. As required by Minn. Stat. § 268.105, subd. 1(c) (2006), the ULJ set forth its reason for crediting the testimony of Sandstrom's employees: the testimony came from a number of sources and suggested a pattern of misconduct. We give deference to credibility determinations made by the ULJ and will not disturb the ULJ's findings on appeal when the evidence substantially sustains them. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Sandstrom's offered the following evidence to support its dismissal of relator: (1) relator violated Sandstrom's policies by failing to properly service his sales accounts; (2) Sandstrom's notified relator of his failure to service one account; (3) Sandstrom's inquired of some of relator's other accounts and found that they were also improperly serviced and that customers complained about other aspects of relator's work and conduct; and (4) a large account assigned to relator refused to work with him.

Relator argues that the evidence provided by Sandstrom's was primarily hearsay and that the ULJ should have disregarded it. While some of the evidence was hearsay, such evidence is admissible in unemployment hearings if it has probative value and "if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs." Minn. R. 3310.2922 (2005). Employers may rely on customer complaints in conducting their business. *See Holton v. Gnan Trucking*, 379 N.W.2d 571, 574 (Minn. App. 1985) (allowing three separate customer complaints to establish evidence of misconduct). Thus, in reaching its decision, the ULJ could properly rely on the customer complaints regarding relator's work. We conclude that substantial

evidence supports the ULJ's decision that relator was dismissed from his position for misconduct.

By special term order, this panel denied Sandstrom's motion to strike certain portions of relator's statement of the case as being outside of the record on appeal. Respondent Department of Employment and Economic Development (department) asserts in its appellate brief that because the documents were not introduced at the evidentiary hearing, they may not be used to support relator's claim for unemployment benefits. Under Minn. Stat. § 268.105, subd. 2(c) (2006), in deciding a request for reconsideration, the ULJ may not consider "any evidence that was not submitted at the evidentiary hearing . . . except for purposes of determining whether to order an additional evidentiary hearing[.]" However, because the department did not appeal the issue of the use of the documents, we decline to address the issue at this juncture of the proceedings. *See Imprint Techs., Inc. v. Comm'r of Econ. Sec.*, 535 N.W.2d 372, 378 (Minn. App. 1995) (stating that issues not raised below may not be raised for first time on appeal).

Affirmed.