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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1702**

Wendy Chambers,  
Relator,

vs.

Family and Cosmetic Gentle Dentistry Ltd.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed August 5, 2008  
Affirmed  
Worke, Judge**

Department of Employment and Economic Development  
File No. 4642 07

Wendy Chambers, 1665 Lakeridge Way, Waconia, MN 55387 (pro se relator)

Family & Cosmetic Gentle Dentistry, Ltd., 5100 Eden Avenue, Suite 209, Edina, MN  
55436 (employer)

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

Considered and decided by Worke, Presiding Judge; Lansing, Judge; and  
Muehlberg, Judge.\*

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\* 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## UNPUBLISHED OPINION

**WORKE**, Judge

Relator challenges the decision by the unemployment-law judge (ULJ) that she was discharged for misconduct and disqualified from receiving unemployment benefits for continuing violations of her employer's policies, arguing that the ULJ's findings are incorrect and that the ULJ failed to explain credibility determinations. We affirm.

### DECISION

This court may affirm the decision of the unemployment-law judge (ULJ), remand the case for further proceedings, or reverse or modify the decision if

the substantial rights of the petitioner 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) (2006).

The ULJ determined that relator Wendy Chambers was disqualified from receiving unemployment benefits because she was discharged for misconduct from her employment with respondent Family and Cosmetic Gentle Dentistry, Ltd. Whether an employee has committed employment misconduct is a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). “Whether the employee committed a particular act is a question of fact.” *Skarhus v. Davanni's Inc.*,

721 N.W.2d 340, 344 (Minn. App. 2006). In making factual findings, the ULJ must make credibility determinations, to which we accord deference and review the findings in the light most favorable to the decision. *Id.* The ULJ's findings will not be disturbed when they are substantially supported by the evidence. *Id.* But whether an act constitutes employment misconduct is a question of law, which we review de novo. *Id.* Employment misconduct is "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." Minn. Stat. § 268.095, subd. 6(a) (2006). An employee's refusal to abide by an employer's reasonable policies and requests is employment misconduct. *Schmidgall*, 644 N.W.2d at 804.

Relator was discharged for violating Gentle Dentistry's policies after she was placed on probation for six months for using Gentle Dentistry's facility after hours to clean her children's teeth. Relator was aware that any violation of the policies during her probationary period would be grounds for termination. Relator argues that Gentle Dentistry never proved misconduct and contends that the ULJ failed to make required findings on credibility. The record shows that relator was discharged because during her probationary period she violated Gentle Dentistry's policies by returning late to work 17 times after her lunch breaks, taking personal phone calls while treating patients, lying down during business hours, extending her 15-minute breaks, making patients feel uncomfortable by talking about her employer prior to Gentle Dentistry, taking multiple

breaks throughout the day on many occasions, and making a negative statement to another employee about her supervisor.

Relator blames her tardiness on the time it took to reboot the computer when punching back in. Relator also contends that the computer clock was not accurate. However, the record shows that relator was aware of a specific policy that employees were required to be punched in at 1:00 in order to timely seat their 1:00 patients. And Gentle Dentistry showed that relator consistently punched in after 1:00 and was the only employee who punched in after 1:00. Relator argues that she needed to take personal phone calls in order to check on her children. But the record shows that company policy prohibited use of cell phones and personal calls during business hours. Relator also suggests that it may have appeared that she took long breaks because she would stay in the break room after her break in order to call patients. But relator never provided this explanation to the ULJ, and the ULJ believed the testimony that relator took multiple extended breaks. Further, relator admitted that she made a 30-minute phone call during one of her 15-minute breaks. Relator also denies speaking badly about her supervisor and making patients feel uncomfortable by discussing her employer prior to Gentle Dentistry. The record supports the ULJ's findings that these incidents occurred the way the employer's witnesses described.

Finally, relator argues that the ULJ failed to explain the credibility determinations. "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 [ULJ] must set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1(c) (2006).

Failure of the ULJ to set out the reason for crediting or discrediting testimony is a basis for remand. *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 29 (Minn. App. 2007). The ULJ specifically found that the testimony from Gentle Dentistry's representatives was more credible than that of relator's because relator's testimony was inconsistent throughout the hearing. Therefore, the ULJ did not err in determining that relator was discharged for misconduct and disqualified from receiving unemployment benefits.

**Affirmed.**