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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1198**

Karen Manypenny,  
Relator,

vs.

White Earth Reservation,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed April 20, 2010  
Affirmed  
Schellhas, Judge**

Department of Employment and Economic Development  
Agency File No. 21915218

Karen M. Manypenny, Bagley, Minnesota (pro se relator)

White Earth Reservation, Mahnommen, Minnesota (respondent employer)

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

Considered and decided by Halbrooks, Presiding Judge; Lansing, Judge; and  
Schellhas, Judge.

## UNPUBLISHED OPINION

SCHELLHAS, Judge

In this certiorari appeal, relator argues that an unemployment-law judge (ULJ) erred in concluding that she was ineligible for unemployment benefits because she was discharged for employment misconduct. We affirm.

### FACTS

Relator Karen Manypenny was employed as an administrative assistant by respondent-employer White Earth Reservation. After separation, relator sought unemployment benefits, and respondent Department of Employment and Economic Development (DEED) determined that she was ineligible. Relator appealed and a hearing was held before a ULJ.

At the hearing, Executive Director Ron Valiant testified on behalf of White Earth and explained that White Earth offers “constituent services,” which are donations made when people experience hardship. Valiant learned from a White Earth council member that services in the form of cash disbursements had been issued to a person named Angela England. Neither Valiant nor other tribal council members, who had authorized disbursements, recognized the name of Angela England. Valiant testified that tribal-council member Terry Tibbetts asked him to investigate Angela England.

Because relator was the employee who prepared the disbursement vouchers, Valiant questioned her about the disbursements to Angela England. According to Valiant, relator initially told Valiant that Angela England was her sister who lived with her but then told him that she did not know how to reach her by telephone. The next day,

relator told Valiant that she had no sister named Angela England and that Angela England was her confirmation name. Relator received total cash disbursements of \$605, using the name of Angela England instead of her own name. White Earth terminated relator's employment because of her dishonesty.

Valiant testified that if relator had sought the disbursements in her own name, White Earth would have helped her and Valiant would have done the paperwork himself. Relator testified that she used the name of Angela England because she did not want anyone to know that she was having financial problems. Valiant rejected relator's excuse because, based on the policy in a handbook, "everything is confidential," and "[i]t wouldn't have gotten out except in our office." Valiant maintained that if someone disclosed that the council was considering a cash disbursement for a member, the person who disclosed the information would be subject to disciplinary action. Valiant explained that relator's use of her legal name in her disbursement request was important because that was how White Earth tracks "how much money goes out to different people." And Valiant asked the rhetorical question: "[H]ow am I going to trust her in her position there as administrative assistant when she does all the paperwork for the council?"

Relator testified that employees are allowed to request cash disbursements, that she did not know of any special procedures for the requests and that it was normal for employees to process their own disbursement requests. According to relator, she told Tibbetts, the tribal-council member, that she was going to use her confirmation name and that he told her to "go ahead." When Valiant initially inquired about the identity of Angela England, relator did not say anything but told him the next morning that she was

Angela England and that Tibbetts had cleared her to use the name. After her conversation with Valiant, she asked Tibbetts if he remembered her telling him she was going to use the alternate name and he said, “oh yeah, I forgot,” and he said that he would call Valiant the next day. Relator’s conversation with Tibbetts was on a speaker phone, and Douglas Stately, her boyfriend, overheard it. The next day when Tibbetts called the officer to speak with Valiant and relator answered the call, Tibbetts told her “don’t worry about it” and that when he explains the situation to Valiant, “hopefully things will be okay from there.”

Stately testified about the conversation between relator and Tibbetts and said that Tibbetts remembered relator telling him that she was going to use the name Angela England and he said that he would talk to Valiant. Tibbetts did not testify.

During her later testimony, relator admitted that when Valiant first approached her about the identity of Angela England, she told him that she did not know how to reach Angela England by phone but denied that she told him that Angela England lived with her. She said she did this because “I knew Angela England was me.”

The ULJ found, among other things, that relator told Valiant that Angela England was her sister. The ULJ noted that White Earth had the right to expect honesty in the workplace and using another name for cash disbursement requests and lying to Valiant during the investigation were violations of the standards of behavior the employer had the right to expect. The ULJ concluded that relator was discharged for employment misconduct and ineligible for benefits. Relator sought reconsideration and the ULJ affirmed. This certiorari appeal follows.

## DECISION

This court may reverse or modify the decision of a ULJ if, among other reasons, the decision is affected by an error of law or unsupported by substantial evidence in view of the entire record as submitted and the substantial rights of the petitioner are prejudiced by the error. Minn. Stat. § 268.105, subd. 7(d) (2008).

An employee discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008). Employment misconduct “means any intentional, negligent, or indifferent conduct,” on or off the job, “that displays clearly a serious violation of the standards of behavior the employer has the right to reasonably expect” or “displays clearly a substantial lack of concern for the employment.” Minn. Stat. § 268.095, subd. 6(a) (2008).

Whether an employee engaged in conduct that makes the employee ineligible for benefits is a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether an employee committed an act is a question of fact, but whether the act constitutes employment misconduct is a question of law. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court views a ULJ’s factual findings in the light most favorable to the decision, defers to the ULJ’s credibility determinations, and will not disturb a ULJ’s factual findings if the evidence substantially sustains them. *Id.* Legal questions are reviewed de novo. *Id.*

The ULJ found that relator was discharged for dishonesty in the form of using an alternate name for disbursement requests and lying during the investigation that followed.

The ULJ credited Valiant's testimony, and this court defers to the ULJ's credibility determinations.

“Dishonesty that is connected with employment may constitute misconduct.” *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305, 307-08 (Minn. App. 1994). In *Baron*, the employee was discharged for failing to train managers in a particular process and for falsely stating that he had. *Id.* at 306. This court concluded that the employee's failure to perform his duties and his dishonesty about it were misconduct. *Id.* at 308. Dishonesty in an investigation can also be employment misconduct. *Cherveney v. 10,000 Auto Parts*, 353 N.W.2d 685, 688 (Minn. App. 1984). In *Cherveney*, the employer investigated suspected theft, and an employee was dishonest during the investigation. *Id.* at 687. This court stated that the employee's dishonesty “was material to the employer's investigation” and was a deliberate violation of the standards of behavior the employer had the right to expect. *Id.* at 688. Under *Baron* and *Cherveney*, relator's dishonesty when Valiant questioned her about the disbursements was employment misconduct.

Cases addressing employee theft lend additional support to the conclusion that relator committed misconduct. In *Skarhus*, for example, this court held that a single act of theft was employment misconduct not subject to the exception for a single incident without adverse impact on the employer. 721 N.W.2d at 344. This court reasoned that the employee's duties required her to handle money and accurately account for items sold and that the employer could no longer entrust her with those responsibilities. *Id.* Another example is *Frank v. Heartland Auto. Servs. Inc.*, a case involving fraud where this court explained: “Regardless of the amount or frequency of the employee's fiduciary

failing, this sort of integrity-measuring conduct will always constitute an act that has a significant adverse impact on the employer, who can no longer reasonably rely on the employee to manage the business's financial transactions.” 743 N.W.2d 626, 631 (Minn. App. 2008).

Here, relator's duties involved handling disbursement requests, and the employer lost confidence in her ability to do so honestly. And relator does not directly argue that her conduct is outside the definition of employment misconduct. Instead, she argues that the ULJ's decision reflects bias and was based on hearsay testimony; that she did not have trust in her employer because another employee disclosed confidential information; that her employer and other employees did not follow the payroll advance policy, the gaming policy, the mileage-reimbursement policy, or the policy addressing position descriptions and job postings; that other employees filled out their own cash disbursement forms; and that Valiant got upset with her and intimidated her.

None of relator's arguments is availing. The ULJ credited Valiant's testimony, and this court defers to the ULJ's credibility determinations. The ULJ's findings and decision are supported by the record, and admission of hearsay evidence is allowed in unemployment proceedings. *See Skarhus*, 721 N.W.2d at 345 (stating that “a ULJ is authorized to conduct a hearing without conforming to the rules of evidence” and that “a ULJ ‘may receive any evidence which possesses probative value, including hearsay’” (quoting Minn. R. 3310.2922 (2005))). Neither relator's lack of trust in her employer nor policy violations by other employees provide an excuse for relator's dishonest conduct. *See Dean v. Allied Aviation Fueling Co.*, 381 N.W.2d 80, 83 (Minn. App. 1986)

(“Violation of an employer’s rules by other employees is not a valid defense to a claim of misconduct.”); *Sivertson v. Sims Sec., Inc.*, 390 N.W.2d 868, 871 (Minn. App. 1986) (addressing argument that employer enforced its rules selectively by stating: “Whether or not other employees violated those same rules and were disciplined or discharged is not relevant here.”), *review denied* (Minn. Aug. 20, 1986).

The ULJ did not err in concluding that relator engaged in employment misconduct and was therefore ineligible for benefits.

**Affirmed.**