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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1228**

David J. DeVilliers,
Relator,

vs.

SVF Cooperative,
Respondent,

Department of Employment and
Economic Development,
Respondent.

**Filed April 2, 2012
Affirmed
Crippen, Judge***

Department of Employment and Economic Development
File No. 27540548-3

David J. DeVilliers, Spring Valley, Minnesota (pro se relator)

SVF Cooperative, Davenport, Iowa (respondent)

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

Considered and decided by Peterson, Presiding Judge; Larkin, Judge; and Crippen,
Judge.

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

UNPUBLISHED OPINION

CRIPPEN, Judge

Relator challenges a decision of the unemployment law judge (ULJ) that he is ineligible for unemployment benefits because he was discharged for employment misconduct. Because the record evidence sustains the ULJ's misconduct findings, we affirm.

FACTS

Relator David DeVilliers was employed by respondent SVF Cooperative as a machine operator from May 2008 until March 30, 2011, when he was discharged. The employer's work rules prohibited the use of profane language toward fellow employees, customers, or management, but relator testified that the use of profanity at the workplace was nonetheless widespread.

In March 2010, relator used profanity toward a coworker who had first denied and then admitted having a numbered utility knife issued to relator. Relator told him that he was a "f---ing liar," and that everything that came out of his mouth was "bulls---." The employer issued a written warning to relator, stating that the use of profanity was against company policy and that if it happened again, "he would be subject to further disciplinary action up to and including discharge."

The second incident occurred in March 2011. Relator was upset about the conditions in the production area, the need to fix a problem caused by a coworker, and the fact that they were running out of supplies and that a supervisor commented on it. After relator addressed the problems, he went to the plant manager's office because he

was still upset. Although the plant manager was not in, employees in the area, including the secretary, a former assistant plant manager, a warehouse worker, and a quality control manager, asked relator what was wrong. Relator complained that he had had enough of this “bulls---,” that it was f---ing ridiculous” that his supervisor, who should have known why they were out of supplies, had been “in [his] face,” and that “he had about enough of this bulls---.” On March 30, 2011, the employer fired relator because of his use of profanity after the warning.

Relator applied for unemployment benefits and the Minnesota Department of Employment and Economic Development issued a determination of ineligibility. Relator appealed and a hearing was held. After the hearing, the ULJ found that although relator’s claim that the use of profanity in the work place was common may have been plausible, the employer had specifically warned him not to use profanity. The ULJ found that relator’s use of profanity in the workplace, despite the previous warning not to do so, displayed clearly a serious disregard of the employer’s interest and the standards of behavior it had a right to expect from him and constituted employment misconduct, making him ineligible for unemployment benefits. Relator requested reconsideration, and the decision was affirmed. This certiorari appeal followed.

D E C I S I O N

An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). Employment misconduct is defined as any intentional, negligent, or indifferent conduct that clearly displays a serious violation of the standards of behavior the employer has the right to

reasonably expect of the employee or a substantial lack of concern for the employment. *Id.*, subd. 6(a) (2010).

When reviewing the ULJ's ineligibility decision, this court may reverse when the decision is not supported by substantial evidence in the record or is otherwise affected by error of law. Minn. Stat. § 268.105, subd. 7(d)(4), (5) (2010). Whether an employee engaged in employment misconduct raises a mixed question of law and fact. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). Whether an employee committed a particular act is a question of fact. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). The ULJ's findings are reviewed in the light most favorable to the decision, and this court will defer to the ULJ's credibility determinations. *Id.* But whether such conduct amounts to disqualifying misconduct is a question of law the court reviews de novo. *Id.*

Generally, an employee who refuses to abide by an employer's reasonable policies and requests commits employment misconduct, particularly if there are repeated violations of the same rule. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804, 806-07 (Minn. 2002). Relator's use of profanity was prohibited both by the employer's work rules and by the warning the employer issued to relator. Relator's primary defense is that the use of profanity was widespread at the company. But the ULJ correctly concluded that this consideration is offset by the specific warning given by the employer after the March 2010 incident that relator should not use profanity in the workplace again. Relator challenges the ULJ's findings of fact, but his claims of error are immaterial to the central

misconduct findings. Relator cites his otherwise excellent record with the company, but that is irrelevant to the issue of whether he committed misconduct.

Affirmed.