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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1807**

Lloyd H. Scott, Jr.,  
Relator,

vs.

Unwired, LLC,  
Respondent,  
Department of Employment and Economic Development,  
Respondent.

**Filed July 23, 2012  
Affirmed  
Stauber, Judge**

Department of Employment and Economic Development  
File No. 27945719-3

Lloyd H. Scott, Jr., Richfield, Minnesota (pro se relator)

Unwired, L.L.C., Plymouth, Minnesota (respondent employer)

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

Considered and decided by Cleary, Presiding Judge; Stauber, Judge; and Collins,  
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## UNPUBLISHED OPINION

**STAUBER**, Judge

On certiorari appeal from a determination by the unemployment law judge (ULJ) that relator is ineligible for unemployment benefits because he was discharged for employment misconduct, relator argues that his conduct of submitting forged receipts for reimbursement was not employment misconduct because no funds were lost, misused, or misappropriated, and his intent was to save the company money by purchasing supplies at a discounted rate. We affirm.

### FACTS

In March 2009, relator Lloyd H. Scott, Jr. began working as a store manager for respondent Unwired, LLC, d/b/a Schock City Cellular (Unwired). As store manager, relator was authorized to purchase office supplies as needed. In order to purchase the necessary supplies, relator was directed to take money from the cash register, buy the items, and then fax the receipt to the central office where the purchases were entered into the company's accounting software.

In June 2011, Unwired president Nathan Puccini noticed a receipt from an Office Depot store in Eagan that had been faxed to the central office from relator. The receipt was dated June 5, 2011, and according to Puccini, "just didn't look like a real receipt." Puccini then contacted the location on the receipt and was redirected to another location that informed him that the Eagan Office Depot had closed several weeks earlier. Puccini further asked for a description of Office Depot's receipts. Puccini was told that their receipts included watermarks and a bar code, which was unlike the receipt that relator had

submitted. Puccini then gathered up 15 receipts dating back to December 4, 2010, that looked the same as the one dated June 5, 2011. The amount of these receipts totaled \$851.37.

Puccini called Unwired Vice President Chad Capp and informed him of the situation. Capp subsequently confronted relator about the June 5, 2011 receipt. According to Capp, relator told him that his wife, who is not an Unwired employee, would be told what supplies were needed, and then she would complete the purchases and bring the supplies to the store and give him the receipts. A meeting between relator, Puccini, Capp, and a district manager was held on June 17, 2011, to further discuss the receipts. At the meeting, relator claimed that his wife would receive supplies from “a guy in town and that guy would [provide] a receipt.” When asked if he could identify the person who provided the supplies and receipts, relator stated that he could not. Relator’s employment was then terminated because he failed to provide “a good explanation” for his submission of the false receipts.

Relator established a benefit account with respondent Minnesota Department of Employment and Economic Development (department), and a department adjudicator initially determined that relator was eligible for unemployment benefits because he was terminated for unsatisfactory work performance. Unwired appealed that determination, and following a hearing on the matter, the ULJ concluded that relator was discharged for unemployment misconduct and, therefore, is ineligible for benefits. Relator requested reconsideration with the ULJ, who affirmed. This certiorari appeal followed.

## DECISION

This court reviews a ULJ's decision to determine whether substantial rights were prejudiced because the findings, inferences, conclusion, or decision are unsupported by substantial evidence in view of the record as a whole or affected by an error of law. Minn. Stat. § 268.105, subd. 7(d) (2010). We view factual findings in the light most favorable to the decision and defer to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Whether an employee committed employment misconduct is a mixed question of fact and law. *Stagg v. Vintage Place*, 796 N.W.2d 312, 315 (Minn. 2010). Whether the employee committed a particular act is a fact question, which this court reviews in the light most favorable to the decision and will affirm if supported by substantial evidence. *Skarhus*, 721 N.W.2d at 344. But whether an employee's act constitutes employment misconduct is a question of law, which is reviewed de novo. *Stagg*, 796 N.W.2d at 315.

A person who is discharged because of employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). "Employment misconduct means any intentional, negligent, or indifferent conduct, on the job or off the job that displays clearly (1) a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee; or (2) a substantial lack of concern for the employment." *Id.*, subd. 6(a) (2010). Employment misconduct does not include inefficiency or inadvertence, simple unsatisfactory conduct, poor performance because of inability or incapacity, or good-faith errors in judgment. *Id.*, subd. 6(b) (2010).

Relator argues that his conduct did not constitute employment misconduct because “[n]o crime was committed,” and “[n]o funds were lost, misused or misappropriated.” Relator also contends that his conduct cannot be considered employment misconduct because “he believed what he was doing was right and proper, and any impropriety was unintentional and accidental.” Thus, relator argues that the ULJ erred by concluding that he is ineligible for unemployment benefits.

Relator’s assertion that no crime was committed or that no funds were lost or misappropriated is irrelevant because the ULJ specifically found that there was insufficient evidence to support a finding of aggravated employment misconduct. Rather, relator was discharged for dishonest behavior. Specifically, he was discharged for “making fake receipts and submitting them for expense.” Relator does not appear to deny that he engaged in this conduct. Instead, he seems to claim that such conduct does not constitute employment misconduct.

We disagree. An employee’s conduct must be considered in the context of his job responsibilities. *Frank v. Heartland Auto. Servs., Inc.*, 743 N.W.2d 626, 630 (Minn. App. 2008). “Dishonesty that is connected with employment may constitute misconduct.” *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305, 307–08 (Minn. App. 1994) (holding that employee who falsely claimed to have trained store managers committed employment misconduct); *see also Frank*, 743 N.W.2d at 630–31 (holding that even a single fraudulent act can constitute employment misconduct because employer has right to rely on integrity of employees); *Skarhus*, 721 N.W.2d at 344 (upholding determination that relator committed misconduct based on relator’s petty theft of less than \$4.00 worth

of food, which showed that employer could no longer entrust her with responsibility for essential functions of her job as cashier). “Even a single incident can be misconduct if it represents a sufficient enough disregard for the employer’s expectations.” *Blau v. Masters Rest. Assocs.*, 345 N.W.2d 791, 794 (Minn. App. 1984).

Here, relator held the position of store manager and was entrusted with the duties of ordering supplies for the store. These duties consisted of ordering supplies, taking cash out of the cash register to pay for the supplies, and then submitting the receipts for reimbursement. Relator admitted that he submitted receipts that looked like they were from Office Depot, when he in fact knew that they were not from Office Depot, but were instead from a third party. Relator also refused to identify this third party when confronted with the issue of the receipts by his supervisors. Relator’s conduct was dishonest and, in light of his position as store manager, is more than a mere good-faith error in judgment. Rather, the conduct displays clearly a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee. *See* Minn. Stat. § 268.095, subd. 6(a)(1). Therefore, the ULJ properly concluded that relator was discharged for employment misconduct.

Relator also contends that he is entitled to benefits because “[t]he Statutes clearly state that an employee must be made aware of any issues with employment and given a warning before they can be fired.” But relator fails to cite any statute to support his claim. And, as the department points out, “there is no such statute” supporting relator’s position. It is well settled that “[e]ven a single incident can be misconduct if it represents a sufficient enough disregard for the employer’s expectations.” *Blau*, 345 N.W.2d at 794.

Thus, the failure to provide relator with a warning before his employment was terminated does not render relator eligible for unemployment benefits.

**Affirmed.**