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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1884**

Mohamud Diriyeh Abdi,
Relator,

vs.

Electrolux Home Products, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 30, 2012
Reversed
Connolly, Judge**

Department of Employment and Economic Development
File No. 27506301-3

Jay W. Ramos, Central Minnesota Legal Services, St. Cloud, Minnesota (for relator)

Electrolux Home Products, Inc., c/o TALX Employer Services, LLC, Columbus, Ohio
(respondent)

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

Considered and decided by Larkin, Presiding Judge; Johnson, Chief Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Relator challenges the determination of the unemployment-law judge (ULJ) that he quit employment and is therefore ineligible for unemployment benefits. Because the ULJ's determination that relator quit is not supported by substantial evidence in the record and because relator's actions fall under the illness exception to employment misconduct contained in Minn. Stat § 268.095, subd. 6(b)(7) (2010), we reverse.

FACTS

Relator Mohamud Diriye Abdi was employed full-time as a production worker by respondent Electrolux Home Products Inc. (Electrolux). Electrolux contracts with a third party, Unum Group (Unum), to process employees' leave-of-absence requests. Abdi had worked for Electrolux for three years and had a spotless record. In the fall of 2010, Abdi's wife was in Ethiopia and became seriously ill. In accordance with company policy, Abdi contacted Unum to request a leave of absence, which was approved for December 28, 2010 through January 12, 2011.

While Abdi was on leave in Ethiopia, he was stricken with typhoid and gastritis and was hospitalized in Addis Ababa on January 5, 2011. Before the end of his approved leave of absence, Abdi contacted Unum by telephone to request an extension of leave due to his illness. Unum told him that he would have to submit the necessary forms to request medical leave. Abdi provided Unum with a fax number, but he never received the forms from Unum. Someone helping Abdi called Unum on Abdi's behalf to request that Unum resend the forms, but once again, Abdi did not receive the forms. After these

unsuccessful attempts to get the required forms, Abdi made no further attempts to seek medical leave because, according to his testimony, he thought it would be futile without the required forms and, more importantly, he was incapacitated due to his illness.

Abdi remained in the hospital in Ethiopia for two months after his leave had expired. He had no further contact with Unum or Electrolux during that time. Unaware of Abdi's condition, Electrolux discharged him a month after he failed to return to work. When Abdi was released from the hospital, he immediately returned to Minneapolis and went to Electrolux with proof of his illness and hospitalization in Ethiopia. Abdi was then informed that he had already been discharged.

Abdi applied for unemployment benefits. An adjudicator for respondent Minnesota Department of Employment and Economic Development (DEED) determined that he was ineligible, and he appealed. Despite uncontroverted evidence in the form of testimony and exhibits from both Electrolux and Abdi showing that Abdi was discharged, the ULJ found that Abdi had quit and determined that Abdi had not satisfied the notice requirement of the serious-illness exception to ineligibility for quitting. This certiorari appeal follows.

D E C I S I O N

A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee's. Minn. Stat. § 268.095, subd. 2(a) (2010). A discharge from employment occurs when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity. *Id.*, subd. 5(a) (2010). Whether an

applicant quit or was discharged is a question of fact. *Hayes v. K-Mart Corp.*, 665 N.W.2d 550, 552 (Minn. App. 2003), *review denied* (Minn. Sept. 24, 2003). The ULJ's determination of a quit or discharge should not be disturbed unless "unsupported by substantial evidence." Minn. Stat. § 268.105, subd. 7(d) (2010). This court reviews the ULJ's factual findings "in the light most favorable to the decision," will not disturb findings "when the evidence substantially sustains them," and defers to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

The ULJ stated in her decision that Abdi "quit employment . . . when he failed to return to work." No evidence in the record supports her finding that Abdi quit. Both parties agree that Abdi was discharged, which is corroborated by all the testimony and exhibits. Electrolux's representative at the hearing repeatedly affirmed that Electrolux discharged Abdi. These statements were corroborated by Abdi's testimony and exhibits submitted by Electrolux. Therefore, because the ULJ's finding that Abdi quit is not supported by substantial evidence in the record, we set that finding aside and conclude that Abdi was discharged.

An employee who is discharged is eligible for unemployment benefits unless that employee was discharged for misconduct. Minn. Stat. § 268.095, subd. 4 (2010). Whether an employee committed employment misconduct is a mixed question of law and fact. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether a particular act constitutes employment misconduct is a question of law, which this court reviews de novo. *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App.

2008), *review denied* (Minn. Oct. 1, 2008). Whether the employee committed the particular act, however, is a question of fact. *Id.* Employment misconduct is “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.” Minn. Stat. § 268.095, subd. 6(a) (2010). Whether an employee’s actions “amount[] to a serious violation of the standards of behavior an employer has a right to expect depends on the circumstances of each case.” *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 316 (Minn. 2011). “[A]bsence because of illness or injury of the applicant, with proper notice to the employer” does not constitute misconduct. Minn. Stat. § 268.095, subd. 6(b)(7).

Here, it is uncontested that Abdi was absent due to a serious, life-threatening illness. The issue is whether Abdi properly notified his employer. Abdi informed Unum of his need for medical leave, but was unable to comply with Unum’s policies for requesting medical leave by faxing Unum the necessary forms because he did not receive the forms. Considering the severity of Abdi’s illness, his hospitalization, the difficulty of communication from Ethiopia, and Abdi’s inability to receive the proper forms, Abdi’s efforts to provide notice to his employer were sufficient to bring him under the illness exception to misconduct.

Because Abdi was discharged and did not commit employment misconduct, we reverse the ULJ’s decision to deny him unemployment benefits.

Reversed.