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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2019**

Darrin Christiansen,
Relator,

vs.

Franciscan Sisters of Little Falls Minnesota,
Respondent,

Department of Employment and
Economic Development,
Respondent.

**Filed July 9, 2012
Affirmed
Cleary, Judge**

Department of Employment and
Economic Development
File No. 27904361-3

Darrin Christiansen, St. Cloud, Minnesota (pro se relator)

Douglas P. Seaton, Brittany J. Mayer-Schuler, Seaton, Peters & Revnew, P.A.,
Minneapolis, Minnesota (for respondent employer)

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

Considered and decided by Stauber, Presiding Judge; Worke, Judge; and Cleary,
Judge.

UNPUBLISHED OPINION

CLEARY, Judge

Relator seeks review of an order issued by an unemployment-law judge (ULJ) on October 12, 2011, determining that he is ineligible to receive unemployment benefits. Relator argues that the ULJ erred when he determined that relator's behavior constituted employee misconduct. Relator argues that his failure to complete his time sheet appropriately was an inadvertent mistake and that he had properly communicated with respondent that he would miss his regularly-scheduled meeting with his supervisor, and that therefore neither of these incidents constituted misconduct. Relator also argues that the ULJ did not consider the grievance he filed against his supervisor and contends that the employer's testimony during the telephone hearing was false. Because we hold that relator's behavior constituted employee misconduct, we affirm.

FACTS

Relator Darrin Christiansen worked for respondent Franciscan Sisters of Little Falls as the Health and Recreation Director of St. Francis Health and Recreation (St. Francis) from January 2001 until June 8, 2011. St. Francis is a health and recreation center that has a racquetball court, weight room, and swimming pool. Relator's job as director included scheduling, hiring, and training employees and maintaining the pool, as well as interacting with members of St. Francis when they came to use the facility.

St. Francis was generally dissatisfied with relator's conduct, but there were two specific incidents that led to relator's discharge. St. Francis's complaints leading up to the final incidents included that relator had a history of leaving work early or arriving

late; that he represented St. Francis in an unprofessional manner; that he watched sports online and visited websites that were not work-related while he was at work; that he failed to set up equipment for trainers who were teaching classes at St. Francis; and that he was rude to guests at St. Francis.

Relator received multiple verbal warnings about his behavior, and on May 25, 2011, relator received a disciplinary report from his supervisor, Sister Mary Pat Burger. The report stated that relator had been “consistently failing to work a minimum 40 hours per week and ha[d] been arriving late and leaving early.” The report also referenced specific occasions when Sister Burger believed that relator’s actions and communications were inappropriate. The corrective actions required of relator included keeping an accurate record of the hours he worked, including recording “exact time(s) of arriving and leaving the building and when working or not working (breaks, lunch).” The report also noted that relator should “communicate in a timely, tactful, respectful and professional manner.”

Two days after receiving the report, relator submitted his time sheet using only checkmarks to indicate the days that he worked and did not enter any specific times that he worked. On June 1, 2011, relator was scheduled to have a monthly meeting with Sister Burger. On May 31, 2011, Sister Burger e-mailed relator to confirm that their meeting would take place at the regular time. Relator replied to Sister Burger that he had been advised not to meet alone with her “until certain issues have been resolved.” Sister Burger offered to have St. Francis’s human-resources coordinator attend the meeting as well, but relator continued to repeat that he had been advised not to meet with Sister

Burger alone, and he did not provide any further explanation. Relator did not attend the June 1, 2011 meeting. Relator's reason for not attending the meeting was that he "was worried about the possible conflicts that would arise from putting in a grievance against [Sister Burger] that morning." Relator had spoken with Sister Burger's supervisor that same morning and claimed that "she never indicated to me in any way, shape or form that I needed to go to that meeting. And to me it felt like I had kinda covered my obligation as far as not going to that meeting." On June 8, 2011, relator was discharged for insubordination and failure to perform his job duties as required by St. Francis.

In an August 19, 2011 decision, the ULJ found that relator was discharged because of employment misconduct. The ULJ found that the incidents prior to May 25, 2011, did not constitute misconduct, but that the final incidents did constitute employment misconduct under Minn. Stat. § 268.095, subd. 6(a) (2010). The ULJ stated that the requirements that relator accurately complete his time sheet and attend the June 1, 2011 meeting did not impose an unreasonable burden on him. The ULJ found that, when relator ignored the instruction to accurately record his hours and instead completed his time sheet using checkmarks, he showed a "substantial lack of concern for his employment by blatantly disregarding the simple request. It also amounted to a serious violation because the disobedience was deliberate." The ULJ also found that relator's behavior supported a finding of employment misconduct when he ignored Sister Burger's request for the meeting.

Relator requested reconsideration, and on October 12, 2011, the ULJ issued a decision upon reconsideration affirming his previous determination. The ULJ stated that

his original decision was legally correct but issued modified findings of fact. The ULJ found that relator “lied about being advised not to meet one-on-one with Sister Burger” and that he did not have permission from Sister Burger’s supervisor not to meet with Sister Burger. The ULJ determined:

On May 25, 2011, [relator] received a warning for not accurately tracking his hours, and he was asked to keep an accurate record of the hours he worked on his timesheet. In the same warning, he was also told to communicate in a timely, tactful, respectful, and professional manner. Despite the warnings, [relator] blatantly ignored the requests and displayed a substantial disregard of his employer’s expectations.

This certiorari appeal follows.

D E C I S I O N

This court may affirm a decision of a ULJ or we may remand, reverse, or modify a decision of a ULJ if the substantial rights of a petitioner may have been prejudiced by the findings, conclusions, or decision or are affected by an error of law, unsupported by substantial evidence, or are arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2010). “Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law.” *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted). “Whether an employee committed the specific act or acts alleged to be misconduct is a question of fact. . . .” *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). “Whether a particular act constitutes disqualifying misconduct is a question of law, which [an appellate] court reviews de novo.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804

(Minn. 2002). “We view the ULJ’s factual findings in the light most favorable to the decision.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). “[W]e will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Id.* “Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Id.* at 345.

Employment misconduct is defined as “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). Deliberate action in contravention of a written warning by an employer constitutes employment misconduct. *See Schmidgall*, 644 N.W.2d at 806–07.

The ULJ found that the two incidents that led to relator’s discharge were that relator did not fill out his time sheet correctly and that he failed to attend the meeting with Sister Burger on June 1, 2011.

Relator first argues that his failure to accurately record his hours was not misconduct, but that it was an “honest mistake” because he instinctively completed the time sheet by using checkmarks.¹ In his October 12, 2011 decision, the ULJ found that relator “knowingly disobeyed the warning and filled out his time sheet with checkmarks.”

¹ Relator also argues that completing his time sheet with checkmarks amounted to a good-faith error in judgment under Minn. Stat. § 268.095, subd. 6(b)(6) (2010). Minn. Stat. § 268.095, subd. 6(b)(6), applies to a situation where “judgment was required,” and recording hours worked does not require any judgment. Further, relator’s behavior in completing the time sheet cannot simultaneously be a good-faith error in judgment and an inadvertent, instinctual act by relator. This argument is meritless.

In a similar case, a grocery-store employee was discharged for misconduct for violating an employer's time-card policy. *McKee v. Cub Foods, Inc.*, 380 N.W.2d 233 (Minn. App. 1986). In *McKee*, the employee finished working, shopped in the store for 15 minutes, and then punched out and left work, knowing that she punched out 15 minutes after she finished working. *Id.* at 235–36. The employee had previously been warned that she had violated the employer's time-card policy by not punching out during a break. *Id.* at 234. This court held that the employee knowingly violated the employer's time-card policy and that her behavior fell within the definition of misconduct. *Id.* at 236.² See also *Schmidgall*, 644 N.W.2d at 806 (holding that “an employee's decision to violate knowingly a reasonable policy of the employer is misconduct”).

Similarly here, relator's behavior constitutes misconduct. The ULJ determined that relator knew that he was required to complete his time sheet specifically and accurately and that he deliberately disobeyed that requirement by completing the time

² When *McKee* was decided, the test for whether behavior constituted misconduct, as articulated by the Minnesota Supreme Court, was whether the behavior was conduct displaying

willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards or behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree . . . to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.

Tilseth v. Midwest Lumber Co., 295 Minn. 372, 374–75, 204 N.W.2d 644, 646 (1973) (quotation omitted). The current statute on this issue, Minn. Stat. § 268.095, subd. 6(a), defines misconduct as “intentional, negligent, or indifferent conduct” that displays clearly “a serious violation of the standards of behavior the employer has a right to reasonably expect of the employee” or “a substantial lack of concern for the employment.”

sheet using checkmarks. Just two days prior to submitting his time sheet, relator was warned that he needed to accurately record the hours he worked and that he needed to work at least 40 hours each week. Relator acknowledged that he was told he needed to be accurate when reporting his hours. The May 25, 2011 discipline report also included a notation that relator was not consistently working 40 hours a week, was arriving late to work, and was leaving early. The ULJ found that it was “highly unlikely” that relator’s behavior was “simply inadvertence.” This conclusion is a credibility finding that we will not disturb. *See Skarhus*, 721 N.W.2d at 345 (“Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.”). Relator’s behavior constituted misconduct because he knowingly violated a reasonable policy of St. Francis that required him to accurately record all of the hours that he worked.

Relator also argues that his failure to attend a regularly scheduled meeting with Sister Burger was not misconduct because he communicated to the proper individuals that he would not be attending the meeting.³ The ULJ found that relator disregarded St. Francis’s instructions to “communicate in a timely, tactful, respectful, and professional manner,” and “displayed a substantial disregard of [St. Francis’s] expectations.”

In a similar case, an employee was discharged for misconduct for violating her employer’s same-shift injury-reporting policy. *Schmidgall*, 644 N.W.2d at 803. In

³ In his brief to the court, relator argues for the first time that his failure to attend the meeting was not serious enough to constitute misconduct because it was a single incident. This court generally will not consider matters raised for the first time on appeal. *See Thiele v. Stitch*, 425 N.W.2d 580, 582 (Minn. 1988).

Schmidgall, the injury-reporting instructions were detailed in the employee handbook that the employee received during orientation. *Id.* The employee failed to follow the instructions on multiple occasions and was eventually discharged for those violations. *Id.* at 803–04. The Minnesota Supreme Court held that “an employee’s decision to violate knowingly a reasonable policy of the employer is misconduct.” *Id.* at 806.

Similarly, relator here did not follow St. Francis’s expectations about appropriate communications, as explained to relator in the May 25, 2011 disciplinary report. The ULJ found that relator ignored the request from Sister Burger to attend their monthly meeting; he lied about being advised not to attend the meeting; he did not reschedule the missed meeting; and he falsely claimed that he had permission from Sister Burger’s supervisor not to attend. The behavior he exhibited does not comport with St. Francis’s reasonable expectation that relator communicate in a “timely, tactful, respectful and professional manner,” and therefore constitutes misconduct.

Finally, relator argues that the ULJ did not consider the grievance that he submitted against Sister Burger on June 1, 2011, and that St. Francis’s evidence and testimony were unsubstantiated and untrue. These arguments are credibility arguments, and, as discussed above, credibility determinations are the province of the ULJ and we will not disturb them on appeal.

Affirmed.