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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2036**

Lee E. Stephens,
Relator,

vs.

A Marketing Resource, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 2, 2012
Affirmed
Stoneburner, Judge**

Department of Employment and Economic Development
File No. 27758006-3

Lee E. Stephens, Spring Lake Park, Minnesota (pro se relator)

Ann Greenwood Brown, Sjoberg & Tebelius, P.A., Woodbury, Minnesota (for
respondent A Marketing Resource, LLC)

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

Considered and decided by Peterson, Presiding Judge; Stoneburner, Judge; and
Hudson, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) that he was discharged from employment for employment misconduct, making him ineligible to receive unemployment benefits. We affirm.

FACTS

Relator Lee Stephens was employed by respondent A Marketing Resource, LLC (AMR) from June 21, 2010, until his employment was terminated on May 10, 2011. Stephens had multiple performance issues during his employment. In October 2010, Stephens received a written warning for alleged failure to properly document his sales. In December 2010, he received an oral warning for repeated tardiness. In February 2011, Stephens was counseled by a general manager for working on personal business at work. On May 2, 2011, Stephens was placed on an employee-performance plan due to ongoing attendance issues. On May 5, 2011, after management listened to recordings of Stephens's sales calls for the previous week, he was suspended for allegedly falsifying sales and inappropriately offering discounted rates. Management discussed these issues with Stephens on May 10, 2011, and presented Stephens with a document stating the reasons for his suspension and that "[g]oing forward if you have any sales put into the system that are considered false or you are found to be giving discounted rates to [a] customer without the customer saying they were cancelling their subscription, your employment with AMR will be terminated." Management told Stephens that he was

required to sign the document under the written acknowledgement stating: “I have read the above documentation and will abide by the rules outlined.”

Stephens, who felt he was being unfairly accused of intentional misconduct or falsification of sales, denied the allegations and refused to sign the document. AMR terminated his employment. Stephens applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) found him ineligible to receive unemployment benefits. Stephens appealed. After a hearing, a ULJ found that Stephens’s employment was terminated for employment misconduct and concluded that he is ineligible to receive benefits. The ULJ affirmed the decision after Stephens requested reconsideration. This certiorari appeal followed.

D E C I S I O N

I. Standard of Review

This court reviews the ULJ’s decision to determine whether a party’s 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). Substantial evidence is “(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety.” *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

Whether an employee committed employment misconduct is a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

“Whether the employee committed a particular act is a question of fact.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court views factual findings in the light most favorable to the decision and defers to the ULJ’s credibility determinations. *Id.* But whether the employee’s act constitutes employment misconduct is a question of law, which this court reviews de novo. *Schmidgall*, 644 N.W.2d at 804.

II. Stephens’s appeal was timely.

We first address AMR’s assertion that Stephens’s appeal by petition for writ of certiorari was untimely and should be dismissed. The assertion appears to be based on AMR’s failure to include three days for mailing provided in Minn. R. Civ. App. P. 126.01 (adopting the three-day extension for service by mail provided in Minn. R. Civ. P. 6.05). As DEED concedes, the record reflects that Stephens’s appeal was timely under the rules.

III. Stephens’s refusal to acknowledge the written warning constituted employment misconduct.

Stephens argues that he refused to sign the document because of the manner in which the document was presented to him and because the statements in the document he was asked to sign misrepresented the truth. Stephens argues on appeal that he was not given the opportunity to read the document, but at the hearing Stephens testified that he did not read the document because of the manner in which it was presented to him. The record does not support Stephens’s assertion that he did not have an opportunity to read the document. And the ULJ found that the document reflected what management learned from listening to recordings of Stephens’s sales calls. At the hearing, Stephens admitted

to falsifying sales records but asserted that he did it by “mistake.” Furthermore, Stephens was not asked to sign an acknowledgement that he falsified sales records. His signature was required only to reflect that he acknowledged having read the document and agreed to follow the policies contained in the document in the future or face employment termination. The only issue on appeal is whether Stephens’s refusal to acknowledge, by his signature, having read the document and agreeing to abide by its terms constituted employment misconduct.

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) (2010). “As a general rule, refusing to abide by an employer’s reasonable policies and requests amounts to disqualifying misconduct.” *Schmidgall*, 644 N.W.2d at 804; *see also Sandstrom v. Douglas Mach. Corp.*, 372 N.W.2d 89, 91 (Minn. App. 1985) (“The general rule is that if the request of the employer is reasonable and does not impose an unreasonable burden on the employee, a refusal will constitute misconduct.”).

Reasonableness depends on the circumstances of a given situation, but it is generally considered reasonable for an employer to require a signature to acknowledge receipt of a warning. *Sandstrom*, 372 N.W.2d at 91. Because AMR’s request that Stephens acknowledge having read the document and agree to abide by the policies contained in the document was reasonable, the ULJ did not err by concluding that Stephens’s refusal to sign the document constituted employment misconduct that disqualified him from

receiving unemployment benefits. *See* Minn. Stat. § 268.095, subd. 4 (2010) (providing that a person who is discharged because of employment misconduct is ineligible to receive unemployment benefits).

Affirmed.