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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-1288**

Tamara Nelson,  
Relator,

vs.

Donnelly Development, LLC,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed May 19, 2014  
Affirmed  
Peterson, Judge**

Department of Employment and Economic Development,  
File No. 31049049-3

Tamara Nelson, Rochester, Minnesota (pro se relator)

Donnelly Development, LLC, Minneapolis, Minnesota (respondent employer)

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

Considered and decided by Hudson, Presiding Judge; Peterson, Judge; and  
Randall, Judge.\*

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

## UNPUBLISHED OPINION

**PETERSON**, Judge

In this certiorari appeal from an unemployment-law judge's decision that relator is ineligible for unemployment benefits because she was discharged for employment misconduct, relator argues that, despite various problems and negative interactions with the new owner of the apartment building that she managed, she did not commit employment misconduct. We affirm.

### FACTS

Relator Tamara Nelson worked full time as an on-site property manager of a student-housing complex. Initially, relator was employed by KOA Evanston LLC. In February 2012, respondent Donnelly Development LLC, became relator's employer when it took over managing the complex.

Donnelly's vice president, Larry Grell, testified about ongoing problems with relator's work performance. One problem was relator's failure to answer the office telephone during the workday. Grell received complaints from students and parents about being unable to contact relator. Grell repeatedly talked to relator about answering the telephone whenever possible and promptly returning calls that she was not able to answer.

Relator's scheduled work hours were from 8:00 a.m. until 5:00 p.m. Grell testified, and relator agreed, that it was crucial for relator to have her computer on during the workday. Donnelly monitored relator's computer use for 30 days during February

and March 2013. The earliest that relator's computer was turned on was 8:30 a.m., and, on 25 days, her computer was turned off by 3:00 p.m.

A co-signer is required on every student lease, but relator accepted numerous leases that were not co-signed. Grell met with relator on March 6, 2013, to talk about the co-signature requirement. Relator told Grell that her previous employer did not require co-signing if the student had lived at the complex during the previous year. Grell explained to relator that co-signing is required on every lease, and, when he told relator that she needed to get the current leases co-signed, she became upset, told Grell to "shut up," and walked out of the meeting.

Relator also walked out of a meeting with Grell in 2012. She went into her apartment adjacent to the office, slammed and locked the door, and refused to come out, despite Grell telling her that her behavior was unacceptable. Grell sent another employee to talk to relator, and, about 15 to 20 minutes later, relator calmed down and returned to the office.

On March 25, 2013, Donnelly discharged relator from employment. Relator applied for unemployment benefits, and respondent Minnesota Department of Employment and Economic Development (DEED) issued a determination of ineligibility. Relator appealed, and a hearing was conducted before an unemployment-law judge (ULJ). The ULJ determined that relator was discharged from employment because she committed employment misconduct and, therefore, she was ineligible for unemployment benefits. This certiorari appeal followed.

## DECISION

We may reverse or modify a ULJ's decision if a relator's substantial rights have been prejudiced because the ULJ's findings, inferences, conclusion, or decision are made upon unlawful procedure, affected by an error of law, not based on substantial evidence in the record, or arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d)(3)-(6) (2012). "Whether an employee committed employment misconduct is a mixed question of fact and law." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We review whether the employee committed a particular act as a question of fact but consider whether the act constitutes employment misconduct as a question of law. *Id.* The ULJ's findings of fact are viewed in the light most favorable to the decision, and the findings will not be disturbed if the evidence substantially supports them. *Id.*

An employee who is discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2012). "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." *Id.*, subd. 6(a) (2012).

Relator argues that Donnelly did not provide her with sufficient resources to perform her job tasks of tenant check-in, weekly reports, and collecting rent payments. But relator did not raise these issues before the ULJ. An issue that was not raised before the ULJ is not properly before this court on review. *Peterson v. Ne. Bank–Minneapolis*, 805 N.W.2d 878, 883 (Minn. App. 2011).

The ULJ's misconduct determination was based on findings that relator got upset and walked out of the March 6, 2013 meeting with Grell and another meeting with Grell in 2012; in February and March 2013, relator did not come to work until 8:30 a.m. or later and left by 3:00 p.m. on 25 days; and relator did not answer her telephone as instructed. The ULJ found: "[Relator's] behavior during the two meetings in question was inappropriate and unprofessional. The preponderance of the evidence shows that [relator] was not working her scheduled hours and was disregarding the employer's instructions about answering phones when she was in the office."

Relator disputes Grell's testimony about the two meetings and relator's failure to answer the telephone as instructed. But the ULJ found that Grell's testimony was more credible than relator's testimony. This court will affirm a ULJ's credibility findings when supported by substantial evidence in the record. *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 29 (Minn. App. 2007); *Ywsfw v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007). Relator denies coming to work late and leaving early. She claims that, with Donnelly's permission, she worked from 8:30 a.m. until 4:30 p.m. Although the evidence that relator's computer was turned on late and shut down early does not conclusively prove that relator arrived at the worksite late and left early, the evidence shows that having the computer on was crucial for relator to perform her job. Even if relator was in the office from 8:30 a.m. until 4:30 p.m., failing to keep her computer on during those hours clearly displayed a substantial lack of concern for the employment.

Relator contends that she was not given a fair amount of time at the hearing before the ULJ and that she was having a difficult time keeping track of what to say to defend herself against Grell's testimony. We recognize that the hearing process can be intimidating. But relator does not identify any information that she intended to present at the hearing but was not permitted to present, and we cannot conclude that relator was not given a fair amount of time at the hearing without some showing that the limited amount of time available prevented her from presenting evidence that she intended to present.

Substantial evidence supports the ULJ's conclusion that relator was discharged because she committed employment misconduct. *See Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002) ("As a general rule, refusing to abide by an employer's reasonable policies and requests amounts to disqualifying misconduct."); *Deike v. Gopher Smelting*, 413 N.W.2d 590, 592 (Minn. App. 1987) ("The Minnesota courts have held that an employee's insubordination may constitute misconduct.")

**Affirmed.**