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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0833**

Gary Gaddy,
Relator,

vs.

Lutheran Social Service of Minnesota,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 13, 2008
Affirmed
Lansing, Judge**

Department of Employment and Economic Development
File No. 2086 07

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Considered and decided by Ross, Presiding Judge; Lansing, Judge; and Johnson,
Judge.

UNPUBLISHED OPINION

LANSING, Judge

Gary Gaddy appeals, by writ of certiorari, an unemployment law judge's determination of employment misconduct for filling out medication-administration forms without confirming that the clients had received the medicine. Gaddy contends that the discharge was in retaliation for filing a workers' compensation claim and complaining about employer misconduct. Because substantial evidence supports the findings that Gaddy failed to follow procedures for administering medication and because the unemployment law judge followed the department's guidelines by declining to issue requested subpoenas, we affirm.

FACTS

Lutheran Social Service of Minnesota employed Gary Gaddy as a direct-support professional at a program for vulnerable adults between August 2001 and November 2006. Following termination of employment, Gaddy applied for unemployment benefits. A department adjudicator determined that Gaddy was not disqualified from receiving benefits, and Lutheran Social Service requested an evidentiary hearing.

At the hearing, Gaddy's supervisor at Lutheran Social Service testified that Gaddy was discharged for violating medication policies. The supervisor testified that at least two separate times Gaddy signed a medication form even though the medication had not been administered.

Gaddy argued that the employment termination stemmed from a work-related accident. Gaddy was injured on October 12, 2006, while trying to help a client who had

fallen on the floor. Although Gaddy called Lutheran Social Service several times, help did not arrive for several hours. As a result, Gaddy filed a workers' compensation claim and also complained about Lutheran Social Service's failure to assist the client. Gaddy argued that the discharge was in retaliation for filing a workers' compensation claim and for complaining about the treatment of the client.

The unemployment law judge concluded that the discharge was not retaliatory and that Gaddy was discharged for employment misconduct. Accordingly, Gaddy was disqualified from unemployment benefits. Gaddy filed this certiorari appeal.

D E C I S I O N

On certiorari appeal, we review the unemployment law judge's (ULJ) decision to determine whether substantial rights were prejudiced because the findings, inferences, conclusion, or decision are affected by error of law or unsupported by substantial evidence in view of the entire record. *See* Minn. Stat. § 268.105, subd. 7(d) (2006) (providing bases on which this court may reverse or modify ULJ's decision). We defer to the ULJ's assessment of credibility and resolution of conflicting testimony. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

I

A discharge for employment misconduct results in disqualification from unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2006). "Employment misconduct" is intentional, negligent, or indifferent conduct that clearly displays either "a serious violation of the standards of behavior the employer has the right to reasonably expect" or "a substantial lack of concern for the employment." *Id.*, subd. 6(a) (2006).

Whether an employee committed a particular act is a fact question, but whether the act constitutes employment misconduct is a question of law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

The record shows that Gaddy improperly filled out medication forms at least twice. On November 21, 2006, a nurse discovered that Gaddy had initialed a medication form, but the medication had not been administered to the client. Gaddy's supervisor at Lutheran Social Service called Gaddy to discuss the error, and they agreed that Gaddy would be more careful in the future. Three days later, on November 24, 2006, Gaddy again initialed a medication form even though the medication had not been administered to the client. When a nurse discovered the problem, two supervisors met with Gaddy to discuss the incidents. Gaddy told them that the forms were initialed because Gaddy expected another employee to administer the medications. Gaddy admitted that this error was consistent with the earlier error. Based on the incidents and the conversation, Gaddy's employment was terminated.

Gaddy's supervisor testified about the procedures used for administering medication. He said that an employee could sign the medication form "if you see that somebody else is passing out the meds and passing them correctly and you're verifying each medication is correct and the dosage is correct and the name on the [card] is correct." But it would be against the rules "if [a] person signs off and they don't know that it has been done." The supervisor testified that violations of the rules were serious because the program serves vulnerable adults who depend on the program for medication

administration. Because the missed medications were for seizure and behavior control, the failure to receive the medications created an increased risk of injury.

The ULJ found that the policy for administering medication was a reasonable policy, that Gaddy violated it, and that Gaddy's actions clearly displayed a violation of the standards of behavior an employer has a right to reasonably expect from its employees. The supervisor's testimony provided substantial evidence supporting the ULJ's conclusion that this policy was in place and that Gaddy violated it. In light of the serious nature of administering medication, Gaddy's actions constituted employment misconduct as a matter of law.

Gaddy takes the position that the evidence shows that the termination was for other reasons. He advances two arguments in support of that position.

First, Gaddy argues that the evidence shows the termination was in retaliation for filing a workers' compensation claim or for complaining about Lutheran Social Service's failure to properly respond to the accident on October 12. But the ULJ considered this claim and found that the supervisor who discharged Gaddy was unaware of Gaddy's complaints. Thus, the ULJ concluded that Gaddy was discharged for failing to comply with medication-administration procedures and that the discharge was not retaliatory. We defer to the ULJ's fact findings and credibility determinations. *Skarhus*, 721 N.W.2d at 344.

Second, Gaddy argues that Lutheran Social Service's termination was based on the *alteration* of medical forms—not for improperly signing medical forms. Gaddy points to testimony from a former supervisor that an employee would not normally be fired based

on a medication error. Gaddy also points out that Lutheran Social Service initially listed the alteration of medical records as a reason for the termination. Gaddy claims that the record does not support the claim that the medical forms were altered. But the ULJ found that—despite the initial statement—the termination was motivated by Gaddy’s improper signing of the medical forms. We defer to the ULJ’s resolution of this conflicting testimony. *Id.*

Gaddy’s final argument is that the ULJ was biased because Gaddy is a transgendered person. But nothing in the record supports this argument, and the ULJ’s findings were based on substantial evidence. Therefore Gaddy is not entitled to unemployment compensation.

II

An evidentiary hearing before a ULJ is not governed by the rules of evidence or other technical rules of procedure. Minn. Stat. § 268.105, subd. 1(b) (2006). The Department of Employment and Economic Development is authorized to adopt rules for evidentiary hearings. *Id.* Evidentiary subpoenas are governed by a department rule, which provides in relevant part that “[a] request for a subpoena may be denied if the testimony or documents sought would be irrelevant, immaterial, or unduly cumulative or repetitious.” Minn. R. 3310.2914 (2007).

Gaddy requested subpoenas to obtain (1) the employee schedules for October and November 2006, (2) a copy of Gaddy’s final time card, (3) specific phone records at Lutheran Social Service, (4) testimony from two Lutheran Social Service employees, and (5) the original medication forms. The department received the request the day before

the evidentiary hearing. At the hearing, the ULJ determined that the subpoenas were unnecessary because the information sought would be unduly cumulative or repetitious.

The ULJ properly rejected Gaddy's subpoena requests. The ULJ considered Gaddy's reasons for wanting each of the five items and properly concluded that the evidence was unnecessary.

First, Gaddy wanted the employee schedules to show that another employee was scheduled to work at the same time because Gaddy was unable to perform all of the job duties. But the ULJ stated that he believed Gaddy's testimony about this fact, and the employer did not dispute it. Thus, the employee schedules were unnecessary.

Second, Gaddy wanted a copy of the final time card to show that Gaddy's final meeting with the supervisors lasted two and one-half hours, until 1 a.m. These facts were supported by the testimony at the hearing and were not disputed.

Third, Gaddy wanted the phone records to show that Gaddy complained about the accident on October 12, that he discussed the accident again with his supervisor on November 23, and that Gaddy was not immediately contacted about the November 24 medication error. These facts were also not in dispute.

Fourth, Gaddy wanted testimony from the nurse who discovered the medication errors and another employee. The ULJ, however, stated that he believed Gaddy's testimony about Gaddy's dealings with these employees and found that their testimony would be irrelevant. Thus, the ULJ properly found that the evidence was unnecessary.

Finally, Gaddy wanted the original medication forms in order to show that the forms were not altered. Because the ULJ concluded that Gaddy was not discharged for

altering the forms, this evidence was not relevant. Therefore, the ULJ properly denied Gaddy's request for subpoenas.

Affirmed.