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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-2015**

Timothy Eifert,  
Relator,

vs.

Automotive Parts HQ Inc./Joint Account,  
Respondent,

Department of Employment and Economic Development,  
Respondent

**Filed June 1, 2010  
Affirmed  
Harten, Judge\***

Department of Employment and Economic Development  
Agency File No. 22973004-3

Timothy Eifert, Harris, Minnesota (pro se relator)

Automotive Parts HQ Inc./Joint Account, St. Cloud, Minnesota (respondent employer)

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

Considered and decided by Toussaint, Chief Judge; Minge, Judge; and Harten,  
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## UNPUBLISHED OPINION

**HARTEN**, Judge

Relator challenges the determination of the unemployment law judge (ULJ) that relator committed misconduct and was ineligible for unemployment benefits. Because relator's acts meet the statutory definition of misconduct, we affirm.

### FACTS

Relator Timothy Eifert worked as a customer service representative for respondent Automotive Parts HQ Inc., an automotive parts store. Respondent had a policy requiring employees who wanted to buy items for themselves to have another employee bill the sale. On 22 June 2009, relator violated respondent's policy by billing himself for a can of paint.

On 24 June, relator received a form designated as a "Written Warning" of a "Policy Violation" from respondent's store manager. It told him that "Termination" would be the proposed "Disciplinary Action" if he did not improve. Under the word, "Explanation," the manager had written that a can of paint he had seen that morning was later "billed on [relator's] account as junk paint for \$5.00."<sup>1</sup> Under "Goals/Corrective Behavior" the manager wrote, "Let someone else know when you are getting paint for yourself, and have them bill it." Both the manager and relator signed the form.

On 26 June and 30 June, relator again billed himself for a can of paint. On 3 July, he was discharged for having violated respondent's policy by billing out paint for

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<sup>1</sup> The manager later testified that the paint would sell for between \$35 and \$40.

himself. He was determined to be ineligible for unemployment benefits because he had been discharged for misconduct.

Relator appealed. Following a telephone hearing, the ULJ found that, twice within the week after relator had been warned to have someone else bill his transactions, “he neglected to have someone else bill the paint.” The ULJ concluded that relator had committed misconduct, had been discharged for misconduct, and was ineligible for benefits. Relator challenges the conclusion that he committed misconduct.

### **D E C I S I O N**

The interpretation of whether an employee’s act is employment misconduct is an issue of law. *Risk v. Eastside Beverage*, 664 N.W.2d 16, 19-20 (Minn. App. 2003). Relator argues that his acts did not constitute misconduct.

Misconduct is conduct “that displays clearly a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee . . . .” Minn. Stat. § 268.095, subd. 6(a) (2008). Violating an employer’s reasonable policies is misconduct. *Schmidgall v. Filmtec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002); *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

First, relator argues that respondent’s warning applied only to mixed paint and that relator’s purchases on 26 June and 30 June were not mixed paint. But the warning referred to “paint,” not specifically to “mixed paint,” and relator was told to “[l]et someone else know when you are getting paint for yourself, and have them bill it.” Relator provides no reason why respondent would have had one policy for employee purchases of mixed paint and a different policy for employee purchases of unmixed paint.

Relator also argues that other employees had violated the policy, but this, even if true, is not a defense. *See Sivertson v. Sims Security, Inc.*, 390 N.W.2d 868, 871 (Minn. App. 1986) (conduct of coworkers irrelevant to a determination of misconduct), *review denied* (Minn. 20 Aug. 1986).

We agree with the ULJ that relator's conduct in twice billing paint to himself after he had been warned not to do so "does display clearly a serious violation of a standard of behavior that [his employer] had the right to reasonably expect of its employee." *See* Minn. Stat. § 268.095, subd. 6(a). The ULJ correctly concluded that relator committed misconduct and was ineligible for benefits.

**Affirmed.**