

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2094**

Darius Brown,
Relator,

vs.

Dick's Sanitation Service Inc.,
Respondent,

Department of Employment
and Economic Development,
Respondent.

**Filed July 6, 2010
Affirmed
Klaphake, Judge**

Department of Employment and Economic Development
File No. 23135925-3

Darius A. Brown, Knoxville, Tennessee (pro se relator)

Dick's Sanitation Service, Inc., Lakeville, Minnesota (respondent)

Lee B. Nelson, Britt K. Lindsay-Waterman, Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent Department of Employment and
Economic Development)

Considered and decided by Hudson, Presiding Judge; Klaphake, Judge; and
Minge, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Relator Darius A. Brown challenges the decision of an unemployment law judge (ULJ) determining that he was ineligible for unemployment benefits because he was discharged for employment misconduct by his employer, respondent Dick's Sanitation Service, Inc. Because the ULJ's conclusion that relator was discharged for employment misconduct for failing to follow the employer's policies for reporting absences from work is supported by substantial evidence, we affirm.

DECISION

We may affirm a ULJ's decision, or may reverse, remand, or modify the decision if, among other things, it is not supported by substantial record evidence. Minn. Stat. § 268.105, subd. 7(d) (2008). We review the ULJ's findings of fact in the light most favorable to the decision and will not disturb the findings so long as the record evidence substantially sustains them. *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court determines whether the employee's act constitutes employment conduct de novo, as a question of law. *Id.*

An employee who is discharged for employment misconduct generally is not eligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008). "Employment misconduct" is defined as "any intentional, negligent, or indifferent misconduct, on the job or off the job 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." *Id.*, subd. 6(a) (Supp. 2009).

Relator was discharged for employment misconduct for failing to personally contact a supervisor or the operations manager to explain his absence from work. Relator was incarcerated for 30 days; on the day of his arrest, relator called the employer's operations manager and left a message stating that he would not be in the next day, but would call again to explain. On the following day, relator called and spoke to the office manager, stating that he would not be at work for 30 days. According to the employer's policies, an employee who is unable to report to work must contact a supervisor or the operations manager; the contact must be in person, and a voicemail is not adequate. Each employee is given a card with a list of five permissible contact people. Relator did not make personal contact with any of the five people. Relator testified that his personal effects were taken away while he was in jail and that he therefore did not have the list. However, when he called the main office number, he did not ask to be transferred to any of the supervisors or the operations manager.

The fact of incarceration alone does not automatically equate to employment misconduct. *See Jenkins v. American Exp. Fin. Corp.*, 721 N.W.2d 286, 290 (Minn. 2006) (declining to adopt rule that absenteeism resulting from incarceration is misconduct as a matter of law). But employment misconduct occurs when an employee clearly violates "the standards of behavior that the employer has a right to reasonably expect of the employee." *Id.*, subd. 6(a)(1). Here, as in *Jenkins*, the employer did not argue that the fact of incarceration was a violation of the standards of behavior expected by the employer. *Cf. Jenkins*, 721 N.W.2d at 290-91. Rather, the employer terminated relator's employment because after sending the operations manager a voicemail on the

evening of June 16, relator failed to contact either a supervisor or the operations manager in person. Because relator then missed three consecutive work days, from June 17-19, the employer terminated his employment in accordance with its policies.

The employer has a policy that an employee must personally contact one of five people to report an absence because “if someone’s gone, we have to fill their route. Obviously, we have to get out and pick up our client’s trash, we can’t just leave it for the next week or whatever.” Even a minor violation of an important employer policy will support a finding of employment misconduct. *See, e.g., Skarhus*, 721 N.W.2d at 344 (concluding that unauthorized taking of small amount of food was employment misconduct, because the employer had the right to expect honesty from its employees, who handled cash transactions). Relator’s failure to personally contact a supervisor or the office manager is a violation of the standards of behavior the employer reasonably expected from its employees and is therefore employment misconduct.

The ULJ’s decision is supported by substantial evidence; we therefore affirm.

Affirmed.