

*This opinion will be unpublished and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
A10-41**

Connie Hanson,
Relator,

vs.

Emerald Care Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed November 30, 2010
Affirmed
Johnson, Chief Judge**

Department of Employment and Economic Development
File No. 23185082-4

Robert H. Ambrose, The Ambrose Law Firm, PLLC, Minneapolis, Minnesota (for relator)

Emerald Care Inc., Victoria, Minnesota (respondent)

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

Considered and decided by Johnson, Chief Judge; Ross, Judge; and Crippen, Judge.*

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

UNPUBLISHED OPINION

JOHNSON, Chief Judge

Emerald Care Inc. terminated the employment of Connie Hanson after she repeatedly failed to follow the correct procedure for administering medication to residents of an assisted-living facility. Hanson sought unemployment benefits but was deemed ineligible on the ground that she was terminated for employment misconduct. We affirm.

FACTS

Hanson worked as a resident coordinator for Emerald Care, an assisted living facility in the city of Victoria, from July 2008 to August 2009. One of her responsibilities was to administer medication to residents of the facility.

Emerald Care requires its employees to follow a six-step procedure when administering medication to residents. First, the employee must verify the identity of the resident to whom the medication will be given. Second, the employee must review the resident's medical administration record (MAR) to determine which medications must be given. Third, the employee must retrieve the medication. Fourth, the employee must verify the identity of the resident a second time to ensure that it matches the MAR. Fifth, the employee must administer the medication to the resident. Sixth, the employee must note in the MAR that the medication was administered. Hanson was required to demonstrate her proficiency in Emerald Care's six-step medication administration procedure at the conclusion of her orientation and training.

Emerald Care terminated Hanson's employment after she failed to follow Emerald Care's six-step medication administration procedure on three occasions. First, on April 7, 2009, Hanson failed to complete the administration of medication to a resident. She retrieved the proper doses but left the cup of medications in a medical cupboard. Another staff person found the cup of medications during the next shift and submitted a report to document Hanson's error. Second, Hanson again failed to administer medication to a resident on July 10, 2009. A nurse submitted a report documenting the error. Hanson's supervisor followed up on these reports by discussing the errors with Hanson and reminding her to carefully follow the medication administration procedure. Third, on August 5, 2009, Hanson failed to use the MAR and to place it in front of her when administering medication to a resident. A nurse observed Hanson's failure to follow proper procedure and reported the incident to Hanson's supervisor.

On August 6, 2009, Emerald Care terminated Hanson's employment. In the written notice of termination, Hanson's supervisor noted that Hanson was discharged for, among other things, "preparing medication without utilizing medication admin record."

Hanson applied for unemployment benefits. The Minnesota Department of Employment and Economic Development (DEED) made an initial determination that she was eligible for benefits. After Emerald Care filed an administrative appeal, a ULJ held an evidentiary hearing. In September 2009, the ULJ determined that Hanson is ineligible for unemployment benefits because she was terminated for employment misconduct. After Hanson requested reconsideration, a different ULJ affirmed the determination of ineligibility. Hanson appeals by way of a writ of certiorari.

DECISION

Hanson argues that the ULJ erred by determining that she was terminated for misconduct and, therefore, is ineligible for unemployment benefits. This court reviews a ULJ's decision denying benefits to determine whether the findings, inferences, conclusion, or decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record. *See* Minn. Stat. § 268.105, subd. 7(d) (2008). The ULJ's factual findings are viewed in the light most favorable to the decision being reviewed. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). The ultimate determination whether an employee is ineligible for unemployment benefits is a question of law, to which we apply a *de novo* standard of review. *Id.*

An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008). Employment misconduct is defined as “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) (Supp. 2009). The same statute also sets forth exceptions to the definition of misconduct, including “inefficiency or inadvertence; . . . simple unsatisfactory conduct; . . . conduct an average reasonable employee would have engaged in under the circumstances; . . . poor performance because of inability or incapacity; [or] good faith errors in judgment if judgment was required.” *Id.*, subsd. 6(b)(2), (3), (4), (5), (6) (Supp. 2009).

In her brief, Hanson argues that the ULJ erred in four ways. First, Hanson contends that her conduct was not intentional. But the law does not require intentional misconduct. The statute defines employment misconduct to include “intentional, negligent, or indifferent conduct.” *Id.*, subd. 6(a). Emerald Care made clear to Hanson the importance of following its medication administration procedure, yet Hanson failed to follow that procedure. Thus, the evidence in the agency record supports the conclusion that Hanson’s conduct was intentional, negligent, or indifferent.

Second, Hanson contends that her violations of Emerald Care’s medication administration procedure were not “serious” and, therefore, not within that part of the statutory definition of employment misconduct that requires “a serious violation of the standards of behavior the employer has the right to reasonably expect.” *Id.* The ULJ considered this issue and found that Hanson’s failure to follow the medication administration procedure was serious because Hanson could have caused harm to Emerald Care residents and subjected her employer to liability. Hanson responds to the ULJ’s reasoning by asserting that none of Emerald Care’s residents actually were harmed by her failure to follow the medication administration procedure. The evidence in the agency record contradicts Hanson’s contention. Hanson’s supervisor informed Hanson after her first error that residents experience harm whenever they do not receive their medications in the manner prescribed by their physicians. In unemployment cases arising in the context of health care, the courts are reluctant to second-guess an employer’s considered judgment about what is in a patient’s best interests. *See Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 525 (Minn. 1989) (“[I]f there is one unique area of

employment law where strict compliance with protocol and militarylike discipline is required, it is in the medical field.”). Thus, the ULJ did not err by finding that Hanson’s failure to follow Emerald Care’s medication administration procedure was “a serious violation of the standards of behavior the employer has the right to reasonably expect.” Minn. Stat. § 268.095, subd. 6(a).

Third, Hanson contends that her failure to follow Emerald Care’s medication administration procedure does not demonstrate “a substantial lack of concern for the employment.” *Id.* As a general rule, refusing to follow an employer’s reasonable policies and requests shows a substantial lack of concern for the employer’s interest. *See Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). “This is particularly true when there are multiple violations of the same rule involving warnings or progressive discipline.” *Id.* at 806-07. As explained above, Emerald Care repeatedly communicated to Hanson the importance of following the medication administration procedure. Thus, the evidence in the agency record supports the conclusion that Hanson showed a substantial lack of concern for her employment.

Fourth and finally, Hanson contends that her conduct is within the statutory exceptions to misconduct for “simple unsatisfactory conduct” or “poor performance because of inability or incapacity.” Minn. Stat. § 268.095, subds. 6(b)(3), (5). Hanson testified that she tried to remember to follow the medication administration procedure and “really wanted to . . . work hard to get it down.” She compares herself to the employee in *Bray v. Dogs & Cats Ltd.*, 679 N.W.2d 182 (Minn. App. 2004), who was deemed not to have engaged in misconduct because she “attempted to be a good employee but just

wasn't up to the job.” *Id.* at 185. This case, however, is distinguishable. There is abundant evidence in the agency record that Hanson knew Emerald Care’s medication administration procedure and was capable of following the procedure but failed to do so, either intentionally or due to her negligence or indifference. Thus, the evidence in the agency record supports the conclusion that Hanson was not terminated for “simple unsatisfactory conduct” or “poor performance because of inability or incapacity.” Minn. Stat. § 268.095, subd. 6(b)(3), (5).

In sum, the ULJ did not err by determining that Hanson is ineligible for unemployment benefits because she was terminated for employment misconduct.

Affirmed.