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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1342**

Eugene G. Ashong,
Relator,

vs.

Time Insurance Company,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 30, 2012
Affirmed
Chutich, Judge**

Department of Employment and Economic Development
File No. 27449481-3

Eugene G. Ashong, Woodbury, Minnesota (pro se relator)

David J. Goldstein, Littler Mendelson, PC, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Peterson, Presiding Judge; Chutich, Judge; and
Huspeni, Judge.*

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

UNPUBLISHED OPINION

CHUTICH, Judge

Relator Eugene Ashong challenges the unemployment law judge's decision that he is ineligible to receive unemployment benefits because he was fired for employment misconduct. Because the record contains substantial support for the unemployment law judge's findings of fact and because the conclusions of law are correct, we affirm.

FACTS

Ashong began working for Assurant, a division of Time Insurance Company, in October 2006 as a workforce analyst. Assurant uses a software tool called ACD Instance. Assurant's informational technology department set the time zone for the software as Eastern Standard Time because the computer server is located in Miami, Florida. In October 2010, Ashong made an unauthorized change to Assurant's system by changing the time zone setting from Eastern Standard Time to Central Standard Time. Ashong's supervisor and Assurant's systems analyst informed Ashong that it was Assurant's business decision to use the eastern time zone setting and that Ashong was not authorized to change the setting. Assurant returned the setting to Eastern Standard Time.

On March 10, 2011, Ashong again changed the time zone setting from eastern to central. He did not ask for permission to make this change and he was not authorized to do so. The change caused reporting errors for several of Assurant's sites.

On March 15, 2011, a supervisor e-mailed Ashong regarding Ashong's assigned task of creating a process manual. Ashong responded that he would not work on the project. On March 16, 2011, the supervisor inquired about the status of schedules for

which Ashong was responsible. Ashong responded that the supervisor's e-mails were a waste of his time. On March 21, 2011, Assurant terminated Ashong's employment for insubordination.

Ashong applied to the Minnesota Department of Employment and Economic Development for unemployment benefits. A department adjudicator determined that he was ineligible for benefits because he had been discharged for employment misconduct.

Ashong appealed the determination, and after a hearing the unemployment law judge determined that Assurant discharged Ashong for employment misconduct. Specifically, the judge found that Ashong knowingly made an unauthorized change to the time zone setting and that he used an insubordinate tone when communicating with his supervisor. The judge therefore found that Ashong was ineligible for unemployment benefits and later affirmed the decision. This certiorari appeal follows.

D E C I S I O N

An employee discharged for employment misconduct is disqualified from receiving unemployment compensation benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). 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) (2010). Whether the employee committed a particular act is a fact question, and we will not disturb the unemployment law judge's findings if they are substantially supported by the evidence. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We review de novo

whether the employee's act is employment misconduct. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011).

Ashong challenges the unemployment law judge's decision that his unauthorized change to the time zone setting was employment misconduct. He contends that he was never informed that he was not allowed to change the setting. Ashong's argument relies on facts that are contrary to those found by the judge, however. The judge specifically found that Ashong had previously changed the setting in October 2010, and was aware that he was not authorized to make the change. In so finding, the judge credited the testimony of Assurant's witnesses over that of Ashong. "Credibility determinations are the exclusive province of the [judge] and will not be disturbed on appeal." *Skarhus*, 721 N.W.2d at 345.

Based upon these findings, Ashong refused to abide by his employer's instruction to keep the time zone setting of Eastern Standard Time. Such action is employment misconduct. *See, e.g., Schmidgall v. FilmTec Corp*, 644 N.W.2d 801, 806 (Minn. 2002) ("When an employee's refusal to carry out a directive of the employer is deliberate, calculated, and intentional, then the refusal is misconduct."); *Bibeau v. Resistance Tech., Inc.*, 411 N.W.2d 29, 32 (Minn. App. 1987) (upholding decision that employee who deliberately chose to disobey her employer's "stupid" instructions committed employment misconduct).

Ashong further argues that he acted because he believed that the time zone should be set to Central Standard Time according to the system manufacturer's recommendations and that the change would improve his employer's system. An

employee's good-faith belief in the wisdom of his actions is "irrelevant" when the employee refuses to abide by an employer's reasonable requests. *See Soussi v. Blue & White Serv. Corp.*, 498 N.W.2d 316, 318 (Minn. App. 1993) (rejecting the argument that an employee can ignore reasonable policy or instruction from the employer if he or she is acting in good faith to benefit the employer).

Ashong was also discharged for e-mails he sent to his supervisor, in which he refused to create a process manual and said that his supervisor's e-mails were a "waste of [his] time." Ashong argues that he was never assigned the task of creating the manual. Relying on the testimony of Assurant's witnesses, the unemployment law judge found that Ashong was assigned that task. The judge also considered the tone of Ashong's e-mails and found it to be inappropriate. Because Ashong used an openly confrontational tone and refused to complete an assigned task, Ashong committed employment misconduct. *Schmidgall*, 644 N.W.2d at 806; *Snodgrass v. Oxford Props., Inc.*, 354 N.W.2d 79, 80 (Minn. App. 1984) (finding that insubordinate behavior can be misconduct). Substantial evidence in the record supports the judge's findings and the ruling is correct as a matter of law.

Finally, Ashong argues that he was fired in retaliation for a previous claim filed against his employer with the Equal Employment Opportunity Commission, claiming racial discrimination. This argument also relies on facts contrary to those found by the unemployment law judge. The judge found that relator was discharged for misconduct and not for a retaliatory purpose. Substantial evidence in the record supports this finding.

We therefore affirm the decision that Ashong is disqualified from receiving unemployment benefits because he committed employment misconduct.

Affirmed.