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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1216**

Michele Ostrander,  
Relator,

vs.

Minnesota Department of Corrections,  
Respondent,

Department of Employment and Economic Development,  
Respondent

**Filed June 4, 2012  
Affirmed  
Crippen, Judge\***

Department of Employment and Economic Development  
File No. 26830732-3

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Development)

Considered and decided by Johnson, Chief Judge; Chutich, Judge; and Crippen,  
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## UNPUBLISHED OPINION

**CRIPPEN**, Judge

Relator Michele Ostrander, a former employee of respondent Minnesota Department of Corrections (MDOC), challenges the decision of the unemployment-law judge (ULJ) that she was ineligible for unemployment benefits because she had been discharged for misconduct after showing an inmate her personal business website, contrary to the policy prohibiting sharing personal information with inmates. We affirm.

### FACTS

Relator worked for respondent MDOC from June 1, 2005, to December 16, 2010, as an administrative specialist in a warehouse. In November 2010, the warden initiated an investigation into relator's conduct when she learned that relator was having an inmate assist her in developing an inventory management program, even though relator had the permission of her supervisor and the inmate's supervisor to have him assist her. The investigation revealed that after being asked by an inmate about a website address displayed on her car, relator showed him the website, which was her personal business website where she sold cordless drills. Relator showed the inmate the website because she "felt it would be better for [her] to show him a page rather than him getting the information from anywhere else." The website contains a P.O. Box number and a business email address, but the inmate only saw the first page of the website "that was just explaining what [the] site was." As a result of the investigation, it was determined that relator had violated a number of employment policies, including one policy that prohibits employees from divulging "any home telephone numbers, addresses, or other

personal information to current . . . [inmates] . . . regarding themselves . . . without the approval of the appointing authority.” Relator’s employment was terminated.

Relator applied for unemployment benefits, and respondent Minnesota Department of Employment and Economic Development (DEED) determined that relator was ineligible for benefits because she committed employment misconduct by violating several MDOC policies. Relator appealed, and an evidentiary hearing was held before a ULJ. The ULJ determined that relator’s use of an inmate in developing her inventory management program was not employment misconduct because she had permission. But the ULJ determined that relator did commit employment misconduct, and was thus ineligible for unemployment benefits, when she showed an inmate her personal business website in violation of the MDOC personal-information policy.

Relator requested reconsideration, and the ULJ affirmed the decision.

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

This court views the ULJ’s factual findings in “the light most favorable to the decision” and gives deference to the ULJ’s credibility determinations. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court will not disturb the ULJ’s factual findings when the evidence substantially sustains them. Minn. Stat. § 268.105, subd. 7(d)(5) (2010). Employees discharged for employment misconduct are ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). Whether an employee engaged in employment misconduct presents a mixed question of law and fact. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). “[W]hether a particular act constitutes disqualifying misconduct is a question of law that we review de

novo.” *Id.* “Employment misconduct means 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.” Minn. Stat. § 268.095, subd. 6(a) (2010).

The ULJ determined that relator’s conduct both violated standards of behavior her employer had a right to expect and displayed a substantial lack of concern for her employment. Relator argues that her display of a webpage to an inmate is not employment misconduct because the website did not display personal information. MDOC’s policy prohibits employees from divulging “other personal information” to [inmates] without approval. Even though the single webpage that relator showed the [inmate] did not contain her business email address or her business P.O. box address, the ULJ did not err in determining that identification of her personal business is “other personal information.” And the record does not show that relator had approval to show the inmate her website. As the ULJ determined, by showing the inmate her personal business website, relator violated MDOC’s policy and MDOC’s reasonable standards of behavior and showed a substantial lack of concern for her employment.

“[I]n deciding whether the conduct rises to the level of employment misconduct,” a ULJ must “consider[]” whether the employee’s conduct was a “single incident,” which is deemed an “important fact.” *Id.*, subd. 6(d) (2010). Relator emphasizes that her conduct was such a “single incident.” The ULJ stated that the personal-information policy “is very important” because “[inmates] could use the personal information to

manipulate the employees.” The ULJ noted that relator’s conduct was a single incident and clearly considered this, but the ULJ found that the violation “created the potential for substantial harm to [the employer].”

Although relator argues that MDOC produced no witnesses to testify that the information on her website “would be sensitive or create a safety issue,” the warden testified that showing her website to an inmate “compromises her safety and the safety of others.” The warden testified that inmates can use personal information “against you, to set you up for favors, manipulation, whatever it may be.” The record supports the determination that safety in the institution is compromised when inmates know personal information about a staff person, and the MDOC can reasonably expect strict compliance with the personal-information policy. *See Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 525 (Minn. 1989) (emphasizing safety concerns in misconduct analysis when nurse operated outside the scope of his nursing license and in opposition to established procedures because the medical field requires “strict compliance with protocol and military[-]like discipline”). The ULJ did not err in determining that relator committed employment misconduct.

In a mistaken attempt to enlarge the cause for a misconduct finding, DEED erroneously asserts that the ULJ’s determination is supported by assertions in the record other than the action cited by the ULJ, such as relator “amassing discipline for racist language, . . . coming to work smelling like alcohol, and . . . being convicted of a gross misdemeanor DWI.” DEED suggests the ULJ erred in omitting any reference to these asserted facts. But these assertions inappropriately attempt to expand the scope of de

novo review by this court, which is limited to matters of law; it is evident that our review does not extend to a determination of the effect of evidence that was not the basis for the ULJ's findings.

Relator's other arguments are without merit. She argues that substantial evidence does not support the ULJ's finding that she showed the inmate her website, but relator herself testified that she showed him her website. Likewise, her argument challenging the ULJ's credibility determination is unpersuasive because it is undisputed that relator showed an inmate her personal business website. Relator also raises other issues about the inventory-management-program development, the internet-access policy, and a letter critique that were either not considered to be misconduct or not addressed by the ULJ; these issues are immaterial to the issue we have reviewed.

**Affirmed.**