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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1837**

Amy Macias,
Relator,

vs.

Health Care Compliance Association (Corp.),
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 25, 2012
Affirmed
Larkin, Judge**

Department of Employment and Economic Development
File No. 28007265-4

Amy A. Macias, West St. Paul, Minnesota (pro se relator)

Sandra L. Jezierski, Anna R. Hickman, Nilan Johnson Lewis P.A., Minneapolis,
Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Willis,
Judge.*

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

UNPUBLISHED OPINION

LARKIN, Judge

Relator challenges an unemployment-law judge's (ULJ) determination that she is ineligible to receive unemployment benefits because she was discharged for employment misconduct. We affirm.

FACTS

Respondent Health Care Compliance Association (HCCA) discharged relator Amy Macias from her employment with HCCA in June 2011. Macias established an unemployment-benefits account with respondent Minnesota Department of Employment and Economic Development (DEED). DEED determined that Macias was ineligible for unemployment benefits. Macias appealed that determination, and a ULJ held a de novo hearing on the eligibility issue. Evidence presented at the hearing establishes the following facts.

HCCA hired Macias in 2008. An HCCA representative testified that HCCA has a sexual-harassment policy prohibiting unwelcome love letters, e-mails, or notes to coworkers, as well as unwanted personal gifts, which create an offensive work environment. Macias testified that she was aware of this policy.

Macias and A.W. had adjoining work areas. They became friends, and Macias informed A.W. that she and her husband had an "open relationship." Macias testified that because she and A.W. were Facebook friends and because A.W. did not reject her as a friend, Macias thought that A.W. would be receptive to advances from Macias's husband. On June 22, 2011, Macias delivered an unsigned note from her husband to

A.W.'s mailbox at work. The note stated: "Someone you kinda know wants to have a secret fling with you. If you want a clue to who I am go to Caribou off York by Chipotle at 12:30 Thursday June 23, and tell them your name and that you have something to pick up." The note made A.W. feel uncomfortable, and she reported it to HCCA's human-resources department. On June 24, A.W. received a bouquet of flowers with an unsigned note from Macias's husband. The note stated: "Since you missed your 1st clue, I felt like sending it to you! If I lived life without asking you once for a good time I wouldn't be living. I have brown eyes and a nice smile, text me 'I want to play.'" The note included a phone number. A.W. reported the flowers and second note to the human-resources department. A.W. suspected that the flowers were from Macias's husband because Macias sent A.W. three texts on the day of delivery, stating "call me when you get this," "call me, it's about the flowers," and "call me as soon as you can."

On June 25, Macias received a voicemail from a human-resources representative informing her that she should have no further contact with A.W. until she spoke with the human-resources department. Macias did not tell her husband to stop contacting A.W. or take any action to stop his pursuit of A.W. On June 27, Macias's husband sent A.W. a text message stating, in part, that A.W.'s beauty intimidated him, that he did not know how to ask if she wanted to go for a drink with him, that he and Macias had an open relationship and to please let him know how she was feeling. A.W. told the human-resources department that she felt violated and sickened and that she suspected that Macias was involved based on prior comments and information on Macias's Facebook page. A.W. informed the human-resources department that she was not comfortable

working with Macias. On June 28, HCCA terminated Macias's employment based on the incidents described above.

Following the hearing, the ULJ found that Macias was discharged for employment misconduct and therefore was ineligible for unemployment benefits. Macias filed a request for reconsideration, but the ULJ affirmed her original determination. This certiorari appeal follows.

D E C I S I O N

When reviewing the decision of a ULJ, we may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are “(1) in violation of constitutional provisions; (2) in excess of the statutory authority or jurisdiction of the department; (3) made upon unlawful procedure; (4) affected by other error of law; (5) unsupported by substantial evidence in view of the entire record as submitted; or (6) arbitrary or capricious.” Minn. Stat. § 268.105, subd. 7(d) (2010). Minnesota courts have defined substantial evidence as: “(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety.” *Minn. Ctr. for Env'tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4 (2010). 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.” *Id.*, subd. 6(a) (2010). The misconduct definitions set out in the statute are exclusive and “no other definition applies.” *Id.*, subd. 6(e) (2010).

Whether an employee committed employment misconduct is a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether a particular act constitutes employment misconduct is a question of law, which an appellate court reviews de novo. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). Whether the employee committed the particular act, however, is a question of fact. *Id.* This court reviews the ULJ’s factual findings “in the light most favorable to the decision” and defers to the ULJ’s credibility determinations. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

It is undisputed that Macias delivered a note that contained romantic overtones from her husband to A.W. at work. She was aware that her husband subsequently sent A.W. flowers and a note suggesting a sexual relationship. Although a human-resources representative informed Macias that she was to have no contact with A.W., she did not tell her husband to stop contacting A.W., nor did she take any action to stop her husband’s romantic pursuit. Macias’s delivery of the first note from her husband to A.W.’s mailbox at work arguably violated HCCA’s sexual-harassment policy, which prohibited unwelcome love letters, e-mails, or notes to coworkers, as well as unwanted personal gifts. “As a general rule, refusing to abide by an employer’s reasonable policies and requests amounts to disqualifying misconduct.” *Schmidgall*, 644 N.W.2d at 804.

Even if Macias's conduct did not violate HCCA's sexual-harassment policy, it violated the standards of behavior HCCA had the right to reasonably expect. Substantial evidence shows that Macias facilitated and participated in her husband's romantic and sexual pursuit of A.W. Macias admitted that she could see how A.W. would be offended by this conduct. But Macias argues that she did not commit employment misconduct because she abided by HCCA's instructions not to have any direct contact with A.W., she had no control over her husband's actions, and she did not harass A.W. Macias's technical compliance with the human-resources department's directive that she not contact A.W. does not preclude a finding of misconduct because Macias's involvement in her husband's actions before the directive constituted a serious violation of the standards of behavior HCCA had the right to reasonably expect and showed a substantial lack of concern for her employment. As the ULJ clarified in her order affirming her original decision, "Macias's conduct, and not her husband's conduct, was the basis for the finding of employment misconduct." And the record belies Macias's assertion that she did not harass A.W. In sum, the ULJ did not err in determining that Macias was discharged for employment misconduct and is ineligible for benefits.

Macias's remaining arguments are unavailing. She argues that HCCA unfairly failed to give her any warnings before terminating her employment. But the relevant inquiry in this appeal is whether Macias engaged in "employment misconduct" as defined by statute and is consequently disqualified from receiving unemployment benefits. *See Brown v. Nat'l Am. Univ.*, 686 N.W.2d 329, 332 (Minn. App. 2004) ("We are not concerned with whether or not the employee should have been discharged but only with

the employee's eligibility for benefits after termination of employment.”), *review denied* (Minn. Nov. 16, 2004). Macias's argument regarding financial hardship is similarly not a consideration in this appeal. Equitable considerations, such as financial hardship, are irrelevant when determining if a terminated employee is eligible for unemployment benefits. *See* Minn. Stat. § 268.069, subd. 3 (2010) (providing that Minnesota's unemployment-insurance statute does not permit equitable denial or allowance of unemployment benefits).

Affirmed.