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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1637**

Rose Peterson Roloff, Relator,

vs.

Arrowhead Senior Living Community, Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 2, 2012
Affirmed
Ross, Judge**

Department of Employment and Economic Development
File No. 27838828-3

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Minnesota (for relator)

Arrowhead Senior Living Community, Cambridge, Minnesota (respondent employer)

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

Considered and decided by Wright, Presiding Judge; Ross, Judge; and Muehlberg,
Judge.*

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

UNPUBLISHED OPINION

ROSS, Judge

Arrowhead Senior Living Community, doing business as St. Raphael's Health Rehabilitation Center, terminated Rose Peterson Roloff's employment after she repeatedly failed to follow resident care plans. Peterson filed for and was denied unemployment benefits by the department of employment and economic development because she was discharged for misconduct. She appealed that determination, but an unemployment law judge (ULJ) also determined that she had been terminated for misconduct. Peterson appeals to this court by writ of certiorari, arguing that the incidents leading to her termination were not misconduct but inadvertence or good faith errors in judgment. Because the ULJ did not err by categorizing Peterson's deficiencies as employment misconduct, we affirm.

FACTS

Arrowhead Senior Living is a skilled nursing home and long-term care facility. Rose Peterson Roloff (who prefers Peterson) worked as a registered nursing assistant at Arrowhead from July 2010 until she was discharged on May 24, 2011.

When Arrowhead hired Peterson, it informed her that she was required to follow the residents' care plans. The care plans ensure resident safety and direct individualized services. They detail how the residents should be dressed, bathed, and transferred to and from bed, as well as their fall risk, diet, and mood and behaviors. During Peterson's 10 months at Arrowhead, she did not consistently follow the care plans. Several noted incidents led to her termination.

In November 2010 Peterson transferred resident F.Z. by herself from F.Z.'s chair to her bed while F.Z.'s care plan required that two staff members participate because of F.Z.'s disabilities. Peterson admitted that she did not follow the care plan and reasoned that another staff member wasn't there promptly, the move was no more than a foot and a half, and F.Z. was small. Arrowhead gave Peterson a written reprimand admonishing her to follow the care plans precisely and warning that Arrowhead would terminate her employment if she did not.

Two months later, Arrowhead suspended Peterson for three days without pay after she incorrectly arranged a sling to transfer resident T.R. to the toilet. T.R. began to slip from the sling and had to be lowered onto the floor. Arrowhead considered this a fall. It again warned Peterson that she would be discharged if she had more safety performance issues.

In May 2011 Peterson raised T.R.'s bed three feet off the floor to change her toileting sheets. T.R.'s care plan restricted the height of her bed to eight inches from the floor because she had a history of falls. Another staff member discovered the error. Arrowhead investigated and determined that it was Peterson who had left the bed in the elevated position. Peterson denied it. Arrowhead discharged Peterson. Its termination form stated that Peterson was terminated for not ensuring resident safety and for failing to follow care plans.

In addition to Peterson's warnings and suspension, she was admonished in four employee evaluations to improve her resident safety skills by following the care plans. The infractions had begun from the start of her employment; at Peterson's 90-day

evaluation, her probation period was extended an additional 30 days because of performance issues.

Peterson filed for unemployment benefits with the Minnesota Department of Employment and Economic Development, but the department deemed her ineligible to receive benefits because she was discharged for misconduct. Peterson appealed the determination of ineligibility. After an evidentiary hearing, a ULJ concluded that Peterson was discharged for employment misconduct. He determined that her “carelessness and her failure to follow the care plans was negligent or indifferent conduct that was a serious violation of the standards of behavior [Arrowhead] had the right to reasonable[y] expect of her and demonstrated a substantial lack of concern for her employment.” Peterson requested reconsideration and the ULJ affirmed his decision. Peterson appeals to this court by writ of certiorari.

D E C I S I O N

Peterson argues that the ULJ erred by determining that she committed employment misconduct. When reviewing a ULJ’s decision of whether to award unemployment benefits, we may remand, reverse, or modify its decision if the relator’s substantial rights were prejudiced because the fact findings are unsupported by substantial evidence or because the decision is affected by an error of law, is made upon unlawful procedure, or is arbitrary. Minn. Stat. § 268.105, subd. 7(d)(3)–(6) (2010).

Peterson contends that she did not commit employment misconduct, which disqualifies an applicant from receiving unemployment benefits. *See* Minn. Stat. § 268.095, subd. 4(1) (2010). Employment misconduct is “any intentional, negligent, or

indifferent conduct . . . 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). Inefficiency or inadvertence is not employment misconduct. *Id.*, subd. 6(b)(2). Nor is simple unsatisfactory conduct, conduct an average reasonable employee would have engaged in, conduct that results from the employee’s inability or incapacity, or conduct that reflects a good faith error in judgment if judgment was required. *Id.*, subd. 6(b)(3)–(5). Whether an employee engaged in employment misconduct is a mixed question of law and fact. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). But whether an employee’s act constitutes misconduct is a question of law, which we review de novo. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

The ULJ did not err by determining that Peterson was discharged for misconduct. “As a general rule, refusing to abide by an employer’s reasonable policies and requests amounts to disqualifying conduct.” *Schmidgall*, 644 N.W.2d at 804. That is especially true when there have been multiple violations of the same policy that have involved warnings or discipline. *Id.* at 806–07. Peterson continually failed to follow the residents’ care plans after repeated warnings in various forms and a suspension. The life-threatening nature of Peterson’s employment failures is self evident. As the ULJ properly concluded, Arrowhead “had the right to reasonably expect that [Peterson] would scrupulously adhere to the policies regarding resident care.” All the incidents of Peterson’s failing to follow the care plans were life threatening or health threatening. And when a policy is meant to protect lives, strict compliance and discipline naturally follow. *See Ress v. Abbott Nw.*

Hosp., Inc., 448 N.W.2d 519, 525 (Minn. 1989). Peterson's continual failure to follow the residents' care plans reflected a negligent or indifferent approach contradicting Arrowhead's reasonable expectations.

Peterson argues that the incidents were not misconduct but rather inadvertence or good faith errors in judgment. *See* Minn. Stat. § 268.095, subd. 6(b)(2), (6). The argument fails. The repeated nature of the negligence after repeated warnings undermines the claim of inadvertence. And there can be no mere good faith error in judgment because the requirement of strict compliance with the case plans rendered her judgment unnecessary; the care plans specified exactly what she must do. *See Potter v. N. Empire Pizza Inc.*, 805 N.W.2d 872, 877 (Minn. App. 2011) (judgment is not required when an employee knows that his conduct is prohibited by company policy). For example, Peterson intentionally violated F.Z.'s care plan when she transferred F.Z. by herself knowing that the care plan specified that two people must move F.Z. Even one violation is sufficient to constitute employee misconduct. *See Ress*, 448 N.W.2d at 524 ("A single incident where an employee deliberately chooses a course of action adverse to the employer can constitute misconduct."). This is so in any case, and given the potentially serious or fatal consequences of any single deliberate violation at Arrowhead, the standard is particularly applicable here.

Affirmed.