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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1836**

Scott Francis Fisher,  
Relator,

vs.

Electrolux Home Products, Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

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

Minnesota Department of Employment and Economic Development  
File No. 27859671-3

Scott Fisher, St. Stephen, Minnesota (pro se relator)

Electrolux Home Products, Inc., c/o TALX Employer Services, LLC, Columbus, Ohio  
(respondent)

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

Considered and decided by Chief Judge Johnson, Presiding Judge; Stoneburner,  
Judge; and Bjorkman, Judge.

## UNPUBLISHED OPINION

STONEBURNER, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) that he is ineligible to receive unemployment benefits because he was discharged for employment misconduct. Because the record supports the ULJ's decision, we affirm.

### FACTS

Relator Scott Fisher was employed by respondent Electrolux Home Products, Inc. from June 5, 2008, until May 25, 2011, when his employment was terminated for violating Electrolux's policy requiring employees to notify Electrolux at least 30 minutes before a shift if the employee is going to be late or absent. Under the policy, employees are subject to discharge if they have three consecutive no-call/no-show violations.

On May 19, 2011, Fisher, while he was at work, was arrested on a warrant issued for an alleged failure to complete court-ordered community service. As Fisher left with the sheriff's deputy, Electrolux's labor-relations manager reminded him that he needed to call every day to report his absence.

Fisher spent eight days in jail. He spoke on the telephone with his fiancée, but he did not ask her for any assistance in reporting to Electrolux. Fisher made one attempt to call Electrolux but did not have the direct reporting telephone number and was unable to reach the reporting number from the main number. Fisher made no other attempts to contact Electrolux until he was released from jail on May 26, 2011. On release from jail, Fisher went to Electrolux and spoke with the labor-relations manager, who informed him that his employment had been terminated for failing to call and report his absences.

Fisher applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) determined that Fisher was ineligible for benefits. Fisher appealed. After a hearing, the ULJ found that Fisher's employment was terminated for employment misconduct, making Fisher ineligible for benefits. The ULJ affirmed the decision on reconsideration. This certiorari appeal followed.

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

### **I. Standard of Review**

This court reviews a ULJ's decision to determine whether a party's substantial rights were prejudiced because the findings, inferences, conclusion, or decision are unsupported by substantial evidence in view of the record as a whole or affected by an error of law. Minn. Stat. § 268.105, subd. 7(d) (2010). Substantial evidence is "(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).

Employment misconduct is defined as "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). Whether an employee has committed employment misconduct is a mixed question of fact and law. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Determining whether the employee performed the "act alleged to be employment

misconduct is a fact question.” *Risk v. Eastside Beverage*, 664 N.W.2d 16, 19-20 (Minn. App. 2003). But whether a particular act constitutes employment misconduct is a question of law, which we review de novo. *Schmidgall v. Filmtec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

**II. The record supports the ULJ’s determination that Fisher’s failure to report his absences constituted employment misconduct.**

On appeal, Fisher asserts that the labor-relations manager lied when he testified that he did not know why Fisher was arrested and when he denied telling Fisher that his position would be held open and that he would be rehired, and Fisher complains that he was not able to obtain legal services to assist him. Although Fisher did not challenge the incarceration order, he asserts that he was wrongly incarcerated because he had completed the required community service. But Fisher’s employment was not terminated due to his incarceration. His employment was terminated for failing to report daily as required by Electrolux’s policy. And Fisher does not dispute that for more than three consecutive days he failed to call to report the absences caused by his incarceration.

“An employer has the right to establish and enforce reasonable rules governing absences from work.” *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 28 (Minn. App. 2007). Refusing to abide by an employer’s reasonable policies generally constitutes disqualifying employment misconduct. *Schmidgall*, 644 N.W.2d at 804. The ULJ noted that Fisher did not seek assistance from anyone to fulfill his reporting obligation to Electrolux and concluded that “Fisher’s halfhearted attempt to contact his employer demonstrates a substantial lack of concern for the employment.” We agree.

Because Fisher violated Electrolux's reasonable attendance policy by not calling to inform the employer that he would not be there for his shifts for more than three consecutive days, his termination from employment was for behavior constituting employment misconduct, and the ULJ correctly determined that he is ineligible to receive unemployment benefits.

**Affirmed.**