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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2060**

Tamara Casareto,
Relator,

vs.

Evangelical Lutheran Good Samaritan Society,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 13, 2012
Affirmed
Stoneburner, Judge**

Minnesota Department of Employment and Economic Development
File No. 27993285-3

Tamara Casareto, International Falls, Minnesota (pro se relator)

Timothy D. Loudon, Jackson Lewis, LLP, Omaha, Nebraska (for respondent Evangelical Lutheran Good Samaritan Society)

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

Considered and decided by Chutich, Presiding Judge; Kalitowski, Judge; and Stoneburner, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Relator challenges the decision of the unemployment-law judge (ULJ) that she was discharged from employment for employment misconduct, making her ineligible to receive unemployment benefits. We affirm.

FACTS

Relator Tamara Casareto was employed by respondent Evangelical Lutheran Good Samaritan Society (GSS) from June 8, 2005 until her employment was terminated on June 30, 2011. At the time of her discharge, she was the director of home health care and supervised three employees.

On June 17, 2011, an employee supervised by Casareto told GSS's human resources director, Deanna Kittleson that she was resigning because of the negative environment created by Casareto's behavior. The employee told Kittleson and Adam Coe, Casareto's supervisor, that she had not told Casareto the real reason for her resignation because she was "fearful" of Casareto's reaction.

Coe met with Casareto later that day to discuss the employee's resignation. Coe told Casareto that the employee was quitting because of the environment created by Casareto. Coe specifically told Casareto that she was not to contact the employee regarding her reason for resigning and that he told her about the employee's reason for resigning only to be used as a learning opportunity. When Casareto indicated that she

wanted to confront the employee and “hear it from her,” Coe reiterated that she was not do that and, if she did, GSS would construe it as harassment or retaliation.

Casareto ignored Coe’s admonitions and confronted the employee, asking her why she was resigning and stating: “Apparently you have some problems with me.” The confrontation made the employee feel uncomfortable. Casareto later told another employee of GSS that she talked to the employee even though Coe told her not to, and that she was “probably going to get in trouble but [she did not] care.”

GSS suspended Casareto pending an investigation into the allegations that she created a negative work environment for her employees and that she had confronted the resigning employee after being specifically told not to do so. Kittleson and Coe interviewed Casareto to discuss the investigation, and Casareto admitted confronting the employee.

GSS terminated Casareto’s employment, citing gross insubordination and intentional violation of confidentiality as reasons for the discharge. The GSS handbook classifies insubordination and violation of confidentiality as “Group III Offenses,” for which the corrective action is first-offense termination. The handbook defines gross insubordination, in relevant part, as “insubordination that . . . consists of willful intent to violate rules, regulations and/or directions given.”

Casareto applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) found her ineligible for benefits. Casareto appealed. After a hearing, a ULJ found that Casareto’s employment was terminated for employment misconduct and concluded that she was ineligible for

benefits. The ULJ affirmed the decision after Casareto requested reconsideration. This appeal by writ of certiorari followed.

D E C I S I O N

A. Standard of Review

This court reviews the 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 Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

"Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law." *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quoting *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002)). Whether an employee committed a particular act is a question of fact, but whether that act constitutes employment misconduct is a question of law, which an appellate court reviews de novo. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). 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).

B. Casareto's refusal to follow the directions of her supervisor constitutes employment misconduct.

The ULJ found that “Casareto was discharged from employment at GSS due to gross insubordination and intentional violation of confidentiality.” Casareto argues that her “misconduct termination” was really a “pre-meditated plan by management to terminate [her] employment.” But the ULJ determined that the testimony of the employer “was more credible than [Casareto’s], in the areas where the two diverged. The employer’s testimony was detailed, persuasive, and outlined a more probable sequence of events.” The ULJ’s determinations are supported by substantial evidence in the record, and we defer to the ULJ’s credibility determinations; therefore, we uphold the finding that Casareto was terminated for gross insubordination as defined in the GSS handbook.

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.” Minn. Stat. § 268.095, subd. 6(a) (2010).

Casareto intentionally committed gross insubordination as defined in the handbook, and GSS has a right to reasonably expect that its employees will not engage in actions that are specifically defined in the handbook as gross insubordination. The ULJ did not err when it determined that Casareto was discharged for employment misconduct making her ineligible to receive unemployment benefits. *See* Minn. Stat. § 268.095,

subd. 4(1) (2010) (providing that a person who is discharged because of employment misconduct is ineligible for unemployment benefits).

Affirmed