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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2066**

Ann Westre-Nelson,
Relator,

vs.

Coborn's Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 30, 2014
Affirmed
Klaphake, Judge ***

Department of Employment and Economic Development
File No. 31198499-3

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Coborns Inc., St. Cloud, Minnesota (respondent)

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

Considered and decided by Ross, Presiding Judge; Kirk, Judge; and Klaphake,
Judge.

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

In this certiorari appeal, relator Ann Westre-Nelson, a gas-station manager, challenges the unemployment law judge's (ULJ) decision that she was ineligible for unemployment benefits because she was discharged for employment misconduct. Because substantial evidence supports the ULJ's determination that relator committed employment misconduct, we affirm.

DECISION

When reviewing an unemployment insurance benefits decision, we may affirm, remand the case for further proceedings, or reverse and modify the decision if the substantial rights of the relator have been prejudiced because the conclusion, decision, findings, or inferences are affected by errors of law, unsupported by substantial evidence in view of the entire record, or are arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2012). “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). Whether an employee committed a particular act is a question of fact, which is viewed in the light most favorable to the ULJ's decision and affirmed if supported by substantial evidence. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But whether the act committed by the employee constitutes employment misconduct is a question of law subject to de novo review. *Id.*

An employee who is discharged by an employer for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2012). 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.” *Id.*, subd. 6(a) (2012). “An employer has a right to expect that its employees will abide by reasonable instructions and directions.” *Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 206 (Minn. App. 2004), *review denied* (Minn. Mar. 30, 2004). Refusing to abide by an employer’s reasonable policies is misconduct. *McGowan v. Exec. Express Transp. Enters., Inc.*, 420 N.W.2d 592, 596 (Minn. 1988).

Here, the ULJ found that relator’s job duties as a gas-station manager for respondent-employer Coborn’s Inc. included physically visiting competing gas stations twice a day to check the prices on the fuel pumps and inputting those prices into the Coborn software system. On April 3, 2013, relator failed to visit the other gas stations and instead entered pricing information from the day before. She initially told her supervisor that she had personally conducted the surveys. When confronted 12 days later, relator then admitted that she had not personally conducted the surveys. The ULJ concluded that relator did not survey her employer’s competitors as required by company policy and compounded her wrongdoing by lying to her employer. The ULJ further determined that relator’s behavior constituted “a serious violation of the standards of behavior [respondent] had the right to reasonably expect of her and demonstrated a

substantial lack of concern for her employment.” Accordingly, the ULJ concluded that relator was discharged for misconduct.

Relator argues that failing to follow company policy on one occasion should not have resulted in her termination. However, Minnesota no longer recognizes a single-incident exception. *Potter v. N. Empire Pizza, Inc.*, 805 N.W.2d 872, 875 (Minn. App. 2011), *review denied* (Minn. Sept. 6, 2011). Instead, it is one factor to be considered. Minn. Stat. § 268.095, subd. 6(d) (2012). Moreover, the ULJ’s misconduct determination was also based on relator’s false statement to her employer, and “[d]ishonesty that is connected with employment may constitute misconduct.” *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305, 307-08 (Minn. App. 1994).

Relator also contends that the statements made to her employer were inaccuracies rather than lies. However, the ULJ did not find relator’s testimony credible. “Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus*, 721 N.W.2d at 345. The ULJ weighed relator’s testimony against that of the other witnesses and found her explanation to be “contrived, implausible and false.” Upon a second hearing held solely to consider whether relator lied at the first hearing about whether she followed company policy, a second ULJ also found respondent’s evidence more credible because it was “detailed, persuasive, and reasonable,” whereas relator’s testimony was “questionable” and “inconsistent.”

The evidence in the record substantially supports the ULJ's credibility determination, as well as the ULJ's determination that relator's conduct constituted employment misconduct. We therefore affirm.

Affirmed.