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**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2384**

John B. Erickson,
Relator,

vs.

Jackson Landscape,
Respondent, and

Department of Employment and Economic Development
Respondent.

**Filed January 22, 2008
Affirmed
Ross, Judge**

Department of Employment and Economic Development
Agency File No. 1247906

John B. Erickson, 142 Gibbs Street, Prescott, WI 54021 (pro se relator)

Jackson Landscape Supply, Inc., 10906 162nd Street West, Lakeville, MN 55044-9203
(respondent)

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Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101-1351 (for
respondent Department)

Considered and decided by Lansing, Presiding Judge; Dietzen, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

John Erickson's employer discharged him because he failed to obtain a required driver's license and because he used company vehicles without authority. Erickson challenges an unemployment law judge's decision that he lacked good cause for failing to appear at the evidentiary hearing at which he could have presented evidence to the Department of Employment and Economic Development relevant to his claim for unemployment benefits, and that he therefore was not entitled to another evidentiary hearing. Erickson also challenges the unemployment law judge's decision that he is disqualified from receiving unemployment benefits because he was discharged for employment misconduct. Because the unemployment law judge did not abuse his discretion by denying the request for a second hearing and his determination of misconduct is supported by substantial evidence in the record and is a correct application of law, we affirm.

FACTS

Jackson Landscape Supply, Inc., employed John Erickson briefly, from May through July 2006. Jackson hired Erickson to operate a hydroseeding truck, which required Erickson to possess a Class A driver's license. But Erickson failed to obtain the specialized license, so Jackson sent him to various landscaping jobs in a company vehicle that did not require the license. On July 16, 2006, Jackson terminated Erickson's employment for unauthorized use of a company vehicle and for failure to obtain a Class A license. Jackson's dispatcher told Erickson not to take a company vehicle that

day and instead ride with another employee to a job site. Erickson took a company vehicle anyway and arrived at the job site over an hour after he was expected. He claimed he was late due to a flat tire, but he failed to produce a receipt documenting his claimed repair and a mechanic informed Jackson that he investigated and found no evidence of a repair. Jackson directed Erickson to return the vehicle to the shop, but he did not return it for hours. Instead, he drove to his previous employer's office to ask for a job. The owner of the company testified that on several occasions Erickson had been warned about unauthorized use of a company vehicle.

After he was discharged, Erickson applied to the Department of Employment and Economic Development for unemployment benefits. The department found no evidence of employment misconduct and therefore found that Erickson qualified for benefits. Jackson appealed.

An unemployment law judge conducted a telephone hearing in September 2006, but Erickson did not participate. The unemployment law judge determined that Erickson was discharged for employment misconduct and disqualified from receiving benefits. Erickson requested reconsideration, claiming that he had good cause for not participating in the hearing because he was out of the state and did not receive notice of the hearing. Notice of the hearing was sent to Erickson's Minnesota address in September 2006. Erickson claimed that he moved to Wisconsin in August 2006 to search for work. Because Erickson maintained his address in Minnesota and knew that he was receiving mail at that address, the ULJ found that Erickson did not have good cause for missing the

hearing, and he affirmed the September 2006 order. By writ of certiorari Erickson appeals the ULJ's decision.

D E C I S I O N

We first consider whether the ULJ abused his discretion when he denied Erickson's request for reconsideration after Erickson claimed that he missed the evidentiary hearing for good cause. This court gives deference to a ULJ's decision not to hold an additional hearing. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006). We review the ULJ's denial of Erickson's request for reconsideration for an abuse of discretion. *Id.* When an applicant or employer fails to participate in the evidentiary hearing, an order setting aside the findings of fact and decision must be issued if the party who failed to participate had good cause for that failure. Minn. Stat. § 268.105, subd. 2(d) (2006). Good cause for failure to participate is cause that prevents a reasonably diligent person from participating at the evidentiary hearing. *Id.* If the ULJ determines that good cause for failure to participate has been shown, an additional evidentiary hearing is required. *Id.*

Erickson claims that he had good cause for missing the evidentiary hearing because he did not receive notice. Erickson continued to request benefits while he was in Wisconsin and he did not advise the department of an address change. He admitted that he continued to receive mail at the Minnesota address, where notice of the hearing was sent. The ULJ concluded that Erickson was capable of retrieving mail from the Minnesota address. Erickson was therefore prevented from participating in the hearing

because of his own failure to use reasonable diligence, and this is not good cause. The ULJ did not abuse his discretion when he denied Erickson's request for a second hearing.

Erickson raises three additional issues. He contends that Jackson's testimony was hearsay, but hearsay evidence may be considered in hearings before the ULJ. *Skarhus*, 721 N.W.2d at 345; Minn. R. 3310.2922 (2005). Erickson also challenges the truth of Jackson's testimony, but we generally will not disturb the ULJ's credibility determinations. *Skarhus*, 721 N.W.2d at 345.

Finally, Erickson contests the ULJ's decision that he was discharged for employment misconduct. When an employer discharges an employee for employment misconduct, the employee is not eligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2006). Employment misconduct is intentional, negligent, or indifferent conduct that displays clearly either "a serious violation of the standards of behavior the employer has the right to reasonably expect" or "a substantial lack of concern for the employment." *Id.*, subd. 6(a). Whether an employee engaged in employment misconduct is a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether the employee committed a particular act is a factual question, but whether the act constitutes employment misconduct is a question of law. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). We review factual findings in the light most favorable to the decision and will not disturb them as long as there is evidence that reasonably tends to sustain those findings. *Schmidgall*, 644 N.W.2d at 804. We will affirm a ULJ's determination unless the decision violates constitutional provisions, exceeds statutory

authority, is derived from unlawful procedure, relies on an error of law, is unsupported by substantial evidence, or is arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d)(1)-(5).

Jackson alleged that Erickson engaged in employment misconduct by his unauthorized use of a company vehicle. An employee's refusal to abide by an employer's reasonable policies and requests is employment misconduct. *Schmidgall*, 644 N.W.2d at 804. The ULJ found that Erickson disregarded Jackson's orders not to take the company truck on July 16, 2006. This was not an isolated incident of misconduct. See Minn. Stat. § 268.095, subd. 6(a) (excluding from the employment misconduct definition a single incident that does not have a significant adverse impact on the employer). The ULJ found that Erickson had been warned about his unauthorized use of company vehicles on several occasions. Because Erickson's unauthorized use of a company vehicle violated Jackson's specific, repeated requests, the ULJ did not err in concluding that Erickson was discharged for employment misconduct and disqualified from receiving unemployment benefits. We therefore need not address whether Erickson's failure to obtain the required driver's license is employment misconduct.

Affirmed.