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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-0040**

Sharon D. Rose,  
Relator,

vs.

JRM Management LLC,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed February 19, 2008  
Affirmed  
Halbrooks, Judge**

Department of Employment and Economic Development  
File No. 11520 06

Sharon D. Rose, 600 18th Avenue North, #427W, Minneapolis, MN 55411 (pro se  
relator)

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(respondent)

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Considered and decided by Minge, Presiding Judge; Halbrooks, Judge; and  
Stoneburner, Judge.

## UNPUBLISHED OPINION

**HALBROOKS**, Judge

Relator challenges the unemployment law judge's (ULJ) determination that she is disqualified from receiving unemployment benefits because she was terminated for employment misconduct. Because the record supports the ULJ's determination, we affirm.

### FACTS

Relator Sharon D. Rose began her employment with respondent JRM Management, LLC on May 16, 2006. Relator was hired as a telephone sales operator on a part-time basis for 25-30 hours a week and was paid \$10 per hour. As part of her first day of employment, relator was presented with an employee handbook, which she signed. The policy in JRM's handbook regarding absences required employees to notify JRM if they were unable to come to work on a day that they were scheduled. If an employee did not come to work and failed to notify JRM of her absence, the employee was considered to have made a voluntary resignation, and her employment was terminated.

Relator requested time off on July 3 and 4, 2006, and was given permission to take those days off of work. She was scheduled to work on July 5, 2006. But that morning, relator called JRM and informed her supervisor that she was ill and asked for the day off. Her supervisor, Jennifer Schara, told relator that JRM was understaffed that day. As a result, Schara asked relator to come in to work for a portion of the day. Relator agreed and worked two hours on July 5, 2006.

Relator did not go to work on the following day, July 6, 2006, and did not call her employer to inform her supervisor that she would be absent. Sue Hamann, an assistant manager for JRM, testified that she did not receive any phone calls from relator on July 6. Schara testified that there were multiple numbers that relator could have called. None of them had a message from relator or evidence that relator had called on July 6. In addition, relator never provided any medical documentation to verify her illness.

Relator was scheduled to work again on July 7, 2006, at 10:00 a.m. Relator did not appear for work that morning but called in at 11:26 a.m. and left a message that she would not be at work that day because she was not feeling well. Relator returned to work on July 10, 2006. Upon arrival, relator was brought into Schara's office, and Schara informed relator that her employment was terminated because of her failure to call in regarding her absence on July 6.

Relator was initially determined to be qualified for unemployment benefits based on statements made by relator to a department adjudicator. Relator told the adjudicator that she had called JRM but that her calls and messages were ignored. JRM appealed this determination.

On September 12, 2006, the date of the appeal hearing, both relator and Schara were unable to participate. Schara later contacted the ULJ and stated that she was able to participate, but the ULJ was unable to contact the relator. The ULJ rescheduled the hearing for October 3, 2006. On the date of the rescheduled hearing, the ULJ called relator. Relator again told the ULJ that she was unable to participate in the hearing that day. The ULJ had arranged for relator to use a phone at a workforce center location so

that she would not have to use her cell phone. Relator did not use the workforce phone and hung up on the ULJ. The ULJ contacted Schara and informed her that relator had chosen not to participate. The hearing went forward, and the ULJ concluded that relator's actions were employment misconduct that disqualified her from receiving unemployment benefits. The ULJ affirmed on relator's motion for reconsideration. This certiorari appeal follows.

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

Relator argues that the ULJ erred in concluding that she engaged in employment misconduct by failing to notify her employer of her absence on July 6, 2006. Relator alleges that she did notify her employer and that her employer provided false testimony at the hearing.

This matter comes before us on a writ of certiorari under Minn. Stat. § 268.105, subd. 7(a) (2006), and Minn. R. Civ. App. P. 115. When reviewing ULJ decisions,

[t]he Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:

- (1) in violation of constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the department;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.

Minn. Stat. § 268.105, subd. 7(d) (2006).

Employment misconduct appeals present mixed questions of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). The question of whether an employee committed a particular act is a question of fact. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). A ULJ's finding of fact is viewed in the light most favorable to the ULJ's decision and deference is given to a ULJ's determinations of credibility. *Id.* A finding of fact that is supported by substantial evidence will not be disturbed by this court. *Id.*; Minn. Stat. § 268.105, subd. 7(d)(5). But the question of whether the employee's act constitutes employment misconduct is a question of law, which this court reviews de novo. *Schmidgall*, 644 N.W.2d at 804; *Wichmann v. Travalia & US Directives, Inc.*, 729 N.W.2d 23, 27 (Minn. App. 2007).

Here, relator signed her employment handbook on May 16, 2006, stating that she was aware of JRM's attendance policy. Under that policy, relator was considered to have submitted a voluntary resignation when she failed to notify JRM of her absence. Schara and Hamann both testified that there was no record of any call or message from relator regarding her absence on July 6. The following day, relator did not call her employer until an hour and a half after she was scheduled to begin work. Relator asserts that she did leave a message with JRM. Because both Schara and Hamann deny her claim, the dispute is a credibility issue.<sup>1</sup> The ULJ concluded that relator was absent from work on

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<sup>1</sup> Relator has provided an e-mail purportedly from Hamann which claims that Hamann gave false testimony before the ULJ. The e-mail claims that Hamann did receive a message from relator and that Hamann was pressured by Schara to lie. But this was not presented to the ULJ and is not part of the record. We will not consider documents that are not part of the appellate record. *Fabio v. Bellomo*, 489 N.W.2d 241, 246 (Minn. App. 1992), *aff'd*, 504 N.W.2d 758 (Minn. 1993); *Thorp Loan & Thrift Co. v. Morse*, 451

July 6, 2006, and did not call in to notify her employer. The testimony of Schara and Hamann is substantial evidence supporting the ULJ's factual conclusion.

The ULJ concluded that relator's failure to notify her employer constituted employment misconduct, which disqualified her from receiving unemployment benefits.

"Unemployment misconduct" is

any intentional, negligent, or indifferent conduct, on the job or off the job (1) that displays clearly a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee, or (2) that displays clearly a substantial lack of concern for the employment.

Inefficiency, inadvertence, simple unsatisfactory conduct, a single incident that does not have a significant adverse impact on the employer, conduct an average reasonable employee would have engaged in under the circumstances, poor performance because of inability or incapacity, good faith errors in judgment if judgment was required, or absence because of illness or injury with proper notice to the employer, are not employment misconduct.

Minn. Stat. § 268.095, subd. 6(a) (2006).

Employment misconduct by an employee must show a disregard for the standards of behavior that an employer has a right to expect or for the employee's obligations and duties to the employer. *Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 206 (Minn. App. 2004), *review denied* (Minn. Mar. 30, 2004). To be disqualified from receiving unemployment benefits on grounds of employment misconduct, there must be a showing in the record that the employee intended to engage in, or actually engaged in conduct that

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N.W.2d 361, 363 (Minn. App. 1990), *review denied* (Minn. Apr. 13, 1990) ("When [a relator] acts as attorney pro se, appellate courts are disposed to disregard defects in the brief, but that does not relieve [relators] of the necessity of providing an adequate record . . . .").

shows intent to ignore or disregard the employee's duties and obligations or standards of behavior that the employer had a right to expect. *Id.*

Here, relator was aware of the employment policy that required her to notify her employer if she could not come to work. Relator was also aware that failure to notify her employer constituted voluntary resignation. Relator did call in on July 5 to notify her employer that she was ill. Relator knew of the standards required by her employer and disregarded them in failing to inform her employer of her absence. A lack of notification regarding absence from work is sufficient to constitute misconduct on this record.

**Affirmed.**