

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0369**

Matthew J. Hoffman,
Relator,

vs.

Collette Travel Service Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed February 26, 2008
Affirmed
Connolly, Judge**

Department of Employment and Economic Development
File No. 14644 06

Matthew J. Hoffman, 16403 Grinnell Avenue, Lakeville, MN 55044-9062 (pro se relator)

Bob Terra, Collette Travel Service Inc., 162 Middle Street, Pawtucket, RI 02860-1013 (respondent)

Lee B. Nelson, Katrina I. Gulstad, Minnesota Department of Employment and Economic Development, 1st National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, MN 55101-1351 (for respondent department)

Considered and decided by Kalitowski, Presiding Judge; Minge, Judge; and Connolly, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Relator challenges the decision of the unemployment law judge (ULJ) that he was discharged for misconduct. Because evidence supports the ULJ's findings and we conclude that relator's conduct violated the standard of behavior his employer had a right to reasonably expect, we affirm.

FACTS

Relator Matthew Hoffman began working as a district sales manager for Respondent Collette Travel Services, Inc., in 2003. In November 2005, he signed an employment agreement that included a noncompete clause and a provision that he could be terminated for violation of respondent's rules, regulations, or procedures. For example, one procedure required that all sales managers maintain a computerized calendar, documenting their work-related activities such as appointments, cold calls, and calls on customers or potential customers.

Relator's job performance was initially good but began to deteriorate in the summer of 2006. His supervisor suspected that relator was not doing the work he had reported on his computerized calendar and began to make inquiries. She discovered a number of inaccuracies and confronted relator about them in August. Relator admitted that his calendar was not accurate, that he had not done all the work he reported, and that he had falsified entries on the calendar. The supervisor told relator that a probationary letter would be placed in his file. The letter would require relator to meet minimum

performance standards and would state that if relator were found to be seeking work with a competitor, he would be terminated.

Relator informed one of respondent's vice-presidents that he would not agree to the probationary letter because he thought the terms violated his employment contract by forbidding him to seek work with respondent's competitors. The vice-president reported to respondent's chief financial officer (CFO) what the supervisor had discovered and the fact that relator would not accept the probationary letter. The CFO decided to discharge relator for falsifying information on his calendar.

Relator applied for unemployment benefits. An adjudicator of the Minnesota Department of Employment and Economic Development (DEED) found that relator had not been discharged for misconduct and was entitled to benefits. Respondent appealed, and, after a telephone hearing, the ULJ determined that relator had been discharged for misconduct and was not entitled to benefits. Relator requested reconsideration of this decision, and the ULJ issued an order affirming it. This appeal follows.

D E C I S I O N

Employment 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." Minn. Stat. § 268.095, subd. 6(a) (2006). "Whether a particular act constitutes disqualifying misconduct is a question of law, which this court reviews de novo." *Schmidgall v. Filmtec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). But this court does not disturb a

ULJ's factual findings "as long as there is evidence that reasonably tends to sustain those findings." *Id.*

The ULJ found that:

[relator] had engaged in conduct which at the very least appeared to violate standing policies and practices of the company, in that he misreported his time records, and his travel records and misrepresented in at least one phone call his location at the time of the call. . . . [Respondent] had the responsible right to rely upon [relator's] identification of customers whom he was visiting, his business contacts, and his location from day to day.

Two witnesses who testified about relator's conduct provided evidence to sustain these findings.

Respondent's director of business development (DBD) testified about three incidents. First, relator's calendar indicated that on May 23, 2006, relator had called on a clergyman at a church. When the DBD telephoned the church, he learned that this clergyman had not been associated with it since 1991; the person the DBD spoke to did not recognize relator's name and said no representative of respondent had called the church on that date. Second, relator's calendar indicated that he had met with a particular woman at a bank on three separate dates in 2005. When the DBD reached the woman, she said she had never heard of relator and had not seen any representative from respondent for years. Third, in August 2006, the DBD looked up relator's calendar on the computer so that he could work with relator the following day. The DBD left relator a phone message, saying they would meet at relator's first scheduled call, a bank. After the DBD arrived at the bank, he received a call from relator, who said the appointment

had been cancelled. The DBD then called the bank and was told that relator had not spoken with anyone there for months and that no appointment had been scheduled for that day.

Relator's supervisor also testified about two other incidents. First, she noticed that relator's calendar indicated that he had an appointment with a person at a bank the previous week. When she called the person, she was told that the person had not seen relator in quite a while and was glad for the supervisor's call because she wanted to book a trip. Second, relator's calendar listed another appointment with someone at another bank. When the supervisor called, she learned that the person with whom relator said he had an appointment the previous week had not worked at the bank for four years.

Relator does not deny that any of the incidents reported by the DBD and the supervisor occurred; he attributes them to the fact that he failed to update his entries on his computer calendar. But maintaining an accurate computer calendar was one of relator's job responsibilities. Having his calendar reflect appointments with people that relator never made is a serious violation of the standards of behavior that respondent had the right to reasonably expect of him, and it constituted employment misconduct. *See* Minn. Stat. § 268.095, subd. 6(a).

Relator also argues that he was terminated because he refused to agree to the noncompete agreement contained in the probationary letter. But relator had already signed an employment agreement with a noncompete provision, and the CFO who made the decision to terminate him said that the noncompete issue "had absolutely nothing to do with my decision to terminate [relator]." The ULJ found that relator's refusal to

accept the probationary letter was also “intentional conduct displaying a serious violation of the standards of behavior the employer has a right to reasonably expect.” Again, the evidence sustains this finding.

Finally, relator argues that his termination was a violation of respondent’s progressive-discipline policy. But, we are not asked to decide whether or not respondent should have discharged relator, but rather whether the evidence presented sustains a finding that the discharge was for employment misconduct.

The evidence sustains the ULJ’s findings, and we agree that relator’s acts constitute employment misconduct within the meaning of Minn. Stat. § 268.095, subd. 6(a).

Affirmed.