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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-675**

Steven Duray,  
Relator,

vs.

The Hotel Management of Minneapolis Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed February 2, 2010  
Affirmed  
Peterson, Judge**

Department of Employment and Economic Development  
File No. 21620943-4

Steven A. Duray, Minneapolis, Minnesota (pro se relator)

The Hotel Management of Minneapolis Inc., Minneapolis, Minnesota (respondent employer)

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

Considered and decided by Wright, Presiding Judge; Peterson, Judge; and Ross, Judge.

## **UNPUBLISHED OPINION**

**PETERSON, Judge**

Relator challenges an unemployment law judge's determination that relator is ineligible to receive unemployment benefits because he was discharged for employment misconduct. We affirm.

### **FACTS**

Relator Steven Duray worked full-time as an assistant cook for respondent The Hotel Management of Minneapolis, Inc., from November 2006 until December 15, 2008, when he was discharged from employment. Relator was determined to be ineligible for unemployment benefits, and he appealed the determination.

During the appeal hearing before an unemployment law judge (ULJ), relator's supervising chef testified that relator received his first documented warning of work not meeting respondent's standards in September 2007. In April 2008, relator again failed to meet respondent's standards. A Corrective Action Form states that relator was informed of his substandard work and that the necessary corrective action included communication with the chefs regarding daily tasks and their completion, proper cleaning of relator's work station, and completion of relator's daily "prep list," which was one of relator's primary responsibilities. Corrective Action Forms issued during the following months identified additional instances when relator did not complete required tasks for the day or properly clean his work station and did not report these problems to the proper supervisor.

On December 11, 2008, a line of food that relator was responsible for preparing arrived in the cafeteria one and one-half hours late. The next day, relator asked to leave early at 1:00 p.m. for an appointment. Relator's supervisor testified that he told relator that one sous chef was already out sick, but that they would try to work around it. The supervisor also testified that he told relator that a prep list with relator's name on it needed to be completed. At 12:00 p.m., relator asked to leave, even though his prep work had not been completed. Relator's supervisor told relator that the work needed to be done and that there was still one hour to get something done before 1:00 p.m., when the supervisor had agreed to let relator leave. Relator left at approximately 12:45 p.m. without notifying his supervisor or anyone else that he had left an entire prep list unfinished, which meant that his supervisor had to use other employees to complete relator's tasks. When relator returned to work later in the day, he was told to go home.

On December 15, relator, his supervisor, the director of human resources, and a union representative met to discuss relator's actions. Relator's supervisor testified that, during this meeting, he expressed concern about relator's organization and ability to complete his work, and relator responded that he was slow and disorganized and could not complete the job. The supervisor stated that earlier in his employment, relator had shown the ability to complete his work according to respondent's standards. Based on his previous actions and his statements at the meeting, relator was discharged.

During the appeal hearing, relator could not recall any details about some of the earlier incidents for which he was disciplined. Relator admitted that he failed to complete some tasks but stated that they were minor tasks that could be completed by the

following shift and that he attempted to communicate this to the chefs. When questioned about the December 11 incident, relator did not deny that his line of food arrived at the cafeteria late, but he blamed this on an unusually heavy workload that day. Relator stated that he did not communicate the problem to anyone because the chef with whom he worked closely was not present that day and he was too busy to find another chef. Regarding the December 12 incident, relator testified that his supervisor told him in no uncertain terms that he could leave early to go to his appointment. He stated that completing the prep work was not discussed, but that he looked over his prep work, completed some of it, and left for his appointment, and when he got back his supervisor was angry and told him to go home. Relator stated that it was not until the meeting on the following Monday that he realized that he had missed an entire prep list – he stated that the list was “more towards the hot line area” than the prep list area and that the clip on the clipboard might have covered up the list’s date. Relator’s supervisor testified that there is only one area where prep lists are posted and this list had not been posted anywhere out of the ordinary.

The ULJ concluded that relator engaged in employment misconduct and was ineligible for unemployment benefits. Relator requested reconsideration, and the ULJ affirmed the initial order. This appeal follows.

## **DECISION**

This court reviews a ULJ’s decision denying benefits to determine whether the findings, inferences, conclusions, or decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105,

subd. 7(d)(4)-(5) (2008). This court reviews “the ULJ’s factual findings in the light most favorable to the decision.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008). “Employment misconduct” is defined as intentional, negligent, or indifferent conduct that clearly displays 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) (2008). Whether an employee committed 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 question of fact. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). But whether a particular act constitutes employment misconduct is a question of law, which this court reviews de novo. *Id.*

The ULJ’s findings of fact refer to the written citations for substandard work that relator received during 2008. The findings then describe the events of December 11 and 12, 2008:

On December 11, [relator] had only one of the meat items ready at 10:00 a.m., and the second meat item was not ready until 11:30. [Relator] made no attempt to contact either of the chefs on duty to inform them of the situation. On the following day, December 12, 2008, [relator] had contact with [his supervisor] at approximately 8:30 that morning asking if he could leave his shift early, at around 1:00 p.m., and then return at approximately 2:30 to deal with a tax matter. . . . [Relator] was put off at this time. [Relator] again came back

to talk to [his supervisor] at between 12:00 and 12:30. [His supervisor told him] to check to see how much prep he had left to do. [His supervisor] wanted [relator] to let him know what was left before he would allow [relator] to leave. [Relator] had quite a bit of prep left. [Relator] did not report back to [his supervisor] regarding what still needed to be done but instead left for his appointment. [Relator] then returned at approximately 2:30.

With respect to credibility, the ULJ found:

On his final day of actual work, [relator] left his shift when he still had most of his prep work yet to be done and after he was told by [his supervisor] to check first on what needed to be done, [his supervisor] credibly testified that [relator] was aware of the fact that he was to come back to [his supervisor] to update him on the prep work. While [relator] disputes this, the Unemployment Law Judge does not find [relator's] testimony to be particularly credible. [Relator's] testimony was to the effect that he was told to go back and check his prep work before leaving but that he, [relator], had no understanding that he needed to report back to [his supervisor]. This version again simply does not make sense. [His supervisor's] testimony is found to be more credible, especially in light of the past history of warnings that [relator] had received for problematic conduct in the past.

Relator disputes that his supervisor told him to get the prep work done before leaving and asked him to report back on the prep work before leaving. But the ULJ found that the supervisor's testimony was credible and that relator's testimony was not credible and stated the reasons for the credibility determination. When credibility assessments play a significant role in the outcome of a decision, the ULJ must set out the reason for crediting or discrediting testimony. Minn. Stat. § 268.105, subd. 1(c) (2008). This court will affirm if the ULJ's findings are supported by substantial evidence and provide the statutorily required reason for the credibility determination. *Ywswf v.*

*Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn. App. 2007). In light of the ULJ's explicit credibility determinations, the ULJ's findings are supported by substantial evidence that includes the supervisor's testimony and documents admitted at the hearing.

Based on the pattern of failing to meet his supervisor's standards that culminated in relator's failure to perform his duties on December 11 and 12, the ULJ determined that relator was discharged for employment misconduct. Employment misconduct includes any negligent or indifferent conduct on the job that seriously violates the standards of behavior the employer has the right to reasonably expect of the employee. Minn. Stat. § 268.095, subd. 6(a). "As a general rule, refusing to abide by an employer's reasonable policies and requests amounts to disqualifying misconduct." *Schmidgall*, 644 N.W.2d at 804 (Minn. 2002); (citing *McGowan v. Executive Express Transp. Enters., Inc.*, 420 N.W.2d 592, 596 (Minn. 1988)); *see also Sandstrom v. Douglas Mach. Corp.*, 372 N.W.2d 89, 91 (Minn. App. 985) ("The general rule is that if the request of the employer is reasonable and does not impose an unreasonable burden on the employee, a refusal will constitute misconduct.").

Relator contends that because his supervisor told him that he could leave early on December 12, his leaving cannot constitute employment misconduct. But it was not simply leaving early that the ULJ found constituted employment misconduct; it was failing to report to relator's supervisor on the status of the prep work before leaving. During previous disciplinary actions, relator was told that he needed to inform people of the progress of his prep work. And on December 12, relator's supervisor asked relator to let him know what prep work needed to be done before relator left. Failing to inform the

supervisor about the status of the prep work before relator left early was indifferent conduct that violated a standard of behavior that the employer had the right to reasonably expect of relator. We, therefore, affirm the ULJ's decision that relator is ineligible for unemployment benefits because he was discharged for employment misconduct.

**Affirmed.**