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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-209**

Evadne Davis,
Relator,

vs.

Civil Society (Corp),
Respondent,

Department of Employment and
Economic Development,
Respondent.

**Filed December 7, 2010
Affirmed
Hudson, Judge**

Department of Employment and
Economic Development
File No. 23053683-3

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Michael D. O'Neill, Provo-Petersen O'Neill, St. Paul, Minnesota (for respondent Civil Society (Corp))

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Considered and decided by Larkin, Presiding Judge; Peterson, Judge; and Hudson,
Judge.

UNPUBLISHED OPINION

HUDSON, Judge

By certiorari appeal, relator challenges the determination of an unemployment-law judge (ULJ) that she was ineligible for unemployment-compensation benefits because she was discharged for employment misconduct. Because the ULJ did not err by concluding that relator's failure to complete her assigned tasks in preparing for an audit amounted to employment misconduct, we affirm.

FACTS

Relator Evadne Davis worked as a bookkeeper for respondent Civil Society, a nonprofit organization, first through a temporary agency and then as an employee, from November 2007 until July 2009. As part of her work duties in 2008, Davis prepared materials for audits, including audits of grants received by the organization.

In early May 2009, the organization's executive director provided Davis with a letter from the accounting firm that was performing an upcoming audit. The letter listed the schedules and documents that were needed for the firm to perform the audit, including a general ledger history.

At a hearing before a ULJ on Davis's eligibility for unemployment-compensation benefits, the executive director testified that she gave Davis a May 17 deadline for completing the general ledger history. She testified that Davis failed to meet that deadline, and when she repeatedly asked Davis for the information, Davis stated only that she "would start getting it ready."

Davis, on the other hand, testified that she was working on the request, but was given no deadline, and when she told the executive director the books were ready, the executive director did not get back to Davis for a week or two. Davis testified that she called the auditors to clarify what additional information was required and left messages, but they would not call her back. She testified that she reviewed the organization's bookkeeping on a software program with the executive director and sent the requested information to the auditors the second week in June.

On June 17 or 18, the accounting firm called Davis and stated that they were scheduled to perform the audit that day. Davis acknowledged that she had some of the requested materials sitting in her office, but she did not ensure that the auditors received them because the executive director had stated that the auditors did not need everything, and Davis was not sure what was required. Davis testified that the executive director needed to provide additional materials to which Davis lacked access, including the complete board minutes, grant requests, and the summary of the agency's pension or retirement plan. Davis testified that she was waiting for the executive director's permission to submit additional material, and she did not know whether she was supposed to bring it to the auditors' office, and if so, where the office was located. She testified that she did not ask the auditors further questions because she "was . . . trying to get . . . other things ready" and did not think about it. Davis testified that she forwarded the message from the accounting firm about the audit to the executive director, but did not follow up further.

Davis was absent from work the next day. That day, the auditors called the executive director and stated that they had told Davis to have all the material to them by June 15. The executive director testified that she had to work over the weekend to get a copy of the ledger to the auditors. She testified that the next week, she received an e-mail from the auditors stating that they had not yet received all the required documentation, so she met with Davis to determine what had not yet been sent. After talking with Davis, it became apparent to her that Davis was not going to send all of the material, so the agency hired an independent contractor to finish the audit preparation. The audit was made more difficult by the confused records, and the organization incurred additional expense by having the audit performed in its office.

The executive director testified that, because Davis is “a very intelligent person” and had completed a previous audit process, Davis knew the documentation that was required. The executive director therefore inferred that Davis was intentionally declining to submit the material to the auditors and discharged her.¹

Davis applied for unemployment-compensation benefits, and a DEED adjudicator determined that she was eligible for benefits. The organization appealed, and after a hearing, a ULJ determined that Davis was ineligible for benefits because she had committed employment misconduct by failing to perform the necessary tasks to prepare for the audit. On reconsideration, the ULJ affirmed this determination, and this certiorari appeal follows.

¹ Davis’s discharge letter included additional reasons for her discharge, which the ULJ concluded did not support a determination of employment misconduct.

DECISION

This court reviews a ULJ's decision to determine whether substantial rights were prejudiced because the findings, inferences, conclusion, or decision are unsupported by substantial evidence in view of the record as a whole or affected by an error of law. Minn. Stat. § 268.105, subd. 7(d) (2008). This court views factual findings in the light most favorable to the decision and defers to the ULJ's credibility determinations. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether an employee is disqualified from receiving unemployment benefits presents a question of law, which this court reviews de novo. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

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 “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) (Supp. 2009). Employment misconduct does not include inefficiency or inadvertence, simple unsatisfactory conduct, poor performance because of inability or incapacity, or good-faith errors in judgment. *Id.*, subd. 6(b) (Supp. 2009).

Whether an employee engaged in employment misconduct is a mixed question of law and fact. *Schmidgall*, 644 N.W.2d at 804. Whether an employee committed a particular act is a question of fact. *Skarhus*, 721 N.W.2d at 344. A ULJ's factual findings are reviewed in the light most favorable to the decision and will not be disturbed

on appeal if there is evidence that reasonably tends to sustain them. *Schmidgall*, 644 N.W.2d at 804. Whether a particular act constitutes employment misconduct is a question of law, which this court reviews de novo. *Id.*

The ULJ concluded that Davis was discharged based on her conduct and performance, specifically that her failure to prepare adequately for the audit constituted employment misconduct. The ULJ found that, because Davis had previous nonprofit bookkeeping experience and had successfully prepared for an earlier audit, her failure to prepare for the current audit was not due to incapacity or inability. The ULJ determined that Davis's poor handling of the audit process showed clear indifference to her employer's expectations and a substantial lack of concern for her employment.

An employee's refusal to abide by an employer's reasonable policies and directives constitutes employment misconduct. *Id.* Davis argues that her failure to follow her employer's directive to send all of the required documentation to the auditors was not employment misconduct because she did not have access to some of that documentation. But the ULJ found that "[e]ven if Davis did not have access to all of the necessary documents, she was given ample time to track them down and [to] seek clarification on items that she did not understand." This finding is supported by substantial evidence, including the executive director's testimony that she repeatedly asked Davis about the materials, along with Davis's failure to take additional steps to inquire about or complete preparation of the documents by mid-June, six weeks after the auditor requested them.

The ULJ also found not credible Davis's testimony that she was not given a deadline for gathering the documents or a date for the audit. The ULJ instead credited

the employer's written evidence, including the executive director's note stating that Davis was specifically instructed to prepare for the audit by May 17. This court defers to the ULJ's credibility determinations. *Skarhus*, 721 N.W.2d at 344.

Davis argues that she was a "mere bookkeeper" and "not an accountant," implying that her job duties did not include gathering all of the necessary information for the audit. But it is undisputed that Davis had successfully prepared for audits the previous year, and it is reasonable to assume she would be able to perform this assigned task again. Further, employees of a small business "must perform a variety of duties to allow [it] to function smoothly." *McGowan v. Exec. Express Transp. Enters., Inc.*, 420 N.W.2d 592, 596 (Minn. 1988). The executive director could reasonably expect Davis to follow up in a timely fashion to assure that all documentation for the audit was properly furnished.

Based on the record presented, the ULJ did not err by concluding that Davis's conduct clearly displays "a substantial lack of concern for her employment" and by concluding that she is ineligible for unemployment-compensation benefits based on employment misconduct. *See* Minn. Stat. § 268.095, subd. 6(a).

Affirmed.