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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1238**

Hassan Ashur,
Relator,

vs.

Electrolux Home Products, Inc.,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed April 5, 2011
Reversed
Stoneburner, Judge**

Department of Employment and Economic Development
File No. 23598172-5

Jay W. Ramos, Central Minnesota Legal Services, St. Cloud, Minnesota (for relator)

Electrolux Home Products, Inc., St. Cloud, Minnesota (respondent employer)

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

Considered and decided by Wright, Presiding Judge; Stoneburner, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Relator challenges the determination of the unemployment-law judge (ULJ) that
relator's failure to ensure that his employer's third-party leave provider properly

processed documentation of a medical excuse from work constituted employment misconduct that made relator ineligible for unemployment benefits. We reverse.

FACTS

Relator was employed by Electrolux Home Products, Inc. from October 23, 2008, through September 9, 2009. Electrolux uses a third-party leave provider, UNUM, for all sickness, accident, and FMLA-leave issues. Electrolux employees are instructed to provide medical documentation for requested leave to UNUM and not to contact Electrolux about leaves.

In July 2009, relator became ill, and he was on medical leave from approximately July 20 through August 23. Relator returned to work for five days but became ill again. He called in sick on August 31. He did not call in on September 1, but he called in on September 2, and at 5:33 p.m. on that day, a doctor's note on a HealthPartners's form was faxed to UNUM, asking that relator be excused from work from August 31 through September 14, 2009, for medical reasons. A transmission-verification report confirmed the successful transmission of the doctor's note to UNUM. Relator, who was very ill, and whose illness affected his ability to function, took no further action concerning his absences from work.

For reasons not explained in the record, UNUM denies having received the September 2 fax documenting relator's need for additional leave, and Electrolux was not informed by UNUM that relator was on medical leave. When relator failed to appear for work or call in on September 3, 4, 8, and 9, Electrolux terminated his employment

because, under the collective-bargaining agreement, three unexcused absences result in termination of employment.

Relator's application for unemployment benefits was denied. Relator appealed. A ULJ conducted two evidentiary hearings through an interpreter. The ULJ concluded that relator's failure to call UNUM to ensure that it had received his fax and was processing his leave constituted failure to "properly report his absences or follow through with the leave process," displaying a serious violation of the standards of behavior that Electrolux had a right to reasonably expect and constituting employment misconduct, thereby rendering relator ineligible to receive unemployment benefits. On relator's request for reconsideration, the ULJ affirmed the ineligibility determination. This certiorari appeal followed.

D E C I S I O N

On certiorari appeal, a ULJ's decision is reviewed to determine whether substantial rights were prejudiced because the findings, inferences, conclusion, or decision are affected by error of law or unsupported by substantial evidence in view of the whole record. Minn. Stat. § 268.105, subd. 7(d), (4), (5) (2010). Substantial evidence is "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

A discharge for employment misconduct results in ineligibility for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). To qualify as employment

misconduct, the conduct must be “intentional, negligent, or indifferent conduct” that clearly conveys 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)(1), (2) (2010). But regardless of subdivision 6(a), the following do not constitute employment misconduct: conduct that is the consequence of mental illness or impairment; conduct that an average reasonable employee would have engaged in under the circumstances; or absence because of illness or injury of the applicant, with proper notice to the employer. *Id.*, subd. 6(b)(1), (4), (7) (2010).

Whether an employee committed a specific act is a question of fact. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We view a ULJ’s findings of fact in the light most favorable to the decision and do not disturb them if they are supported by substantial evidence. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). Whether an employee’s conduct constitutes misconduct is a question of law that we review de novo. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

In connection with his first leave, relator was not required to take any action after he provided UNUM with documentation from his doctor supporting medical leave. When he needed additional medical leave, relator followed essentially the same procedure as he had for the first leave. He provided UNUM with a doctor’s note documenting need for additional leave. Relator relied on the facsimile-transmission-verification report as verification of delivery of the medical documentation to UNUM and assumed that no further action was required on his part.

Absent evidence of a policy or requirement that an employee must do more than provide medical documentation to UNUM, we conclude that the evidence does not support the ULJ's finding that relator's failure to follow up with UNUM displayed a serious violation of standards of behavior that Electrolux had a right to reasonably expect. We hold that relator's failure to verify that UNUM properly processed the information faxed to it on September 2 did not constitute employment misconduct, and the ULJ erred by concluding that relator is barred from receiving unemployment benefits.

Reversed.