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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1424**

Steven Linse,
Relator,

vs.

Jacob Restaurant Group, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 3, 2011
Reversed
Toussaint, Judge**

Department of Employment and Economic Development
File No. 24628622-3

Loren E. Gross, Minneapolis, Minnesota (for relator)

Jacob Restaurant Group, Inc., Plymouth, Minnesota (respondent)

Lee B. Nelson, Christina Altavilla, Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent Department of Employment and
Economic Development)

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

UNPUBLISHED OPINION

TOUSSAINT, Judge

Relator Steven Linse challenges the decision of the unemployment-law judge (ULJ) that he was discharged from his employment for employment misconduct, arguing that the ULJ abused his discretion by failing to order an additional hearing and erred by concluding that relator's conduct was employment misconduct. Because relator did not commit employment misconduct, we reverse.

DECISION

This court may reverse the ULJ's decision if the employee's substantial rights may have been prejudiced by an error of law. Minn. Stat. § 268.105, subd. 7(d) (2010). An employee who is discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4 (2010). Employment misconduct is any intentional, negligent, or indifferent conduct 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) (2010). If the conduct for which the employee was discharged involved only a single incident, that is an important fact to consider when deciding whether the conduct constitutes employment misconduct. *Id.*, subd. 6(d) (2010). Whether a particular act is employment misconduct is a question of law, which we review de novo. *Brisson v. City of Hewitt*, 789 N.W.2d 694, 696 (Minn. App. 2010).

Relator was employed full time by respondent Jacob Restaurant Group, Inc., as an associate manager at Nye's Polonaise Room until February 2010. Relator was supervised

at Nye's by Joe Stauffer, a general manager. Richard Guntzel, the director of operations, fired relator at the end of a meeting among the three of them. The meeting was a coaching session to improve relator's work performance; according to Guntzel, relator interacted very well with customers but did not follow Stauffer's instructions.

Attempting to explain that he valued his employment, relator told Stauffer that he respected him. It is undisputed that Guntzel interrupted relator; relator then told Guntzel to "fu** off." According to relator, Guntzel swore at him first, yelling "you don't fu**ing respect him" at relator, which prompted relator's response telling Guntzel to "fu** off." By contrast, Guntzel testified that he did not swear at relator:

I interrupted him and told him you know I wasn't interested in hearing his, him stroking [Stauffer] and how, what a great manager he was when he clearly was being insubordinate in several activities which are contradictory to somebody respecting somebody, so I told him I didn't want to hear it, he could do it on his own time.

Guntzel did, however, acknowledge that "tensions were high." The argument was not overheard by customers and did not affect business at Nye's. Guntzel testified that relator was discharged for the single incident. *See* Minn. Stat. § 268.095, subd. 6(d) (stating discharge for single incident is important fact to consider).

The ULJ did not credit either party's testimony, apparently concluding that it is per se employment misconduct for an employee to swear at his supervisor. We disagree. We find no authority holding that an employee *always* commits employment misconduct by swearing at a supervisor. It is undisputed that this was a highly charged confrontation. Even accepting Guntzel's version of events, it is clear that relator was provoked by a combative and hostile remark. An emotional reaction by relator in these circumstances

does not display clearly a substantial lack of concern for employment. Nor is it a serious violation of the standards of behavior the employer may reasonably expect—relator was simply unable to conform to a higher standard of conduct than his supervisors. We conclude that relator did not commit employment misconduct; we therefore reverse the ULJ’s decision that relator is ineligible for unemployment benefits.¹

Reversed.

¹ Because we hold that relator’s action was not misconduct, we need not address his argument that the ULJ abused his discretion by declining to hold an additional hearing.