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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-1576**

Collin Pearson,  
Relator,

vs.

The Affiliated Group, Inc.,  
Respondent,  
Department of Employment and Economic Development,  
Respondent.

**Filed May 23, 2011  
Affirmed  
Stauber, Judge**

Department of Employment and Economic Development  
File No. 25170033-3

Collin Pearson, Rochester, Minnesota (pro se relator)

The Affiliated Group, Inc., Rochester, Minnesota (respondent employer)

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

Considered and decided by Ross, Presiding Judge; Stauber, Judge; and  
Muehlberg, Judge.\*

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\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals  
by appointment pursuant to Minn. Const. art. VI, § 10.

## **UNPUBLISHED OPINION**

**STAUBER**, Judge

Relator challenges the decision by the unemployment law judge (ULJ) that he was discharged for misconduct because he forged paid-time-off forms, arguing that the ULJ's finding is unsupported by substantial evidence and that he received an unfair hearing. Because we conclude that the ULJ's finding is fully supported by the record and because we find no merit to relator's argument that the hearing was unfair, we affirm.

### **FACTS**

Relator Collin Pearson was discharged from his position as a collection agent for respondent The Affiliated Group, Inc. (TAG) for forging his supervisor's signature on two paid-time-off (PTO) forms. Relator applied for unemployment benefits, stating in his application that he had been discharged for unsatisfactory attendance. A Minnesota Department of Employment and Economic Development (DEED) adjudicator determined that he was eligible for benefits. TAG appealed, and a ULJ held a de novo hearing. The ULJ found that relator was discharged for employment misconduct and was therefore ineligible for benefits. Relator requested reconsideration and the ULJ affirmed her decision. This certiorari appeal followed.

### **DECISION**

When reviewing the decision of a ULJ, this court may affirm the decision, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced. Minn. Stat. § 268.105, subd. 7(d) (2010). Whether an employee engaged in employment misconduct presents a mixed question of law and fact.

*Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether a particular act constitutes employment misconduct is a question of law, which appellate courts review de novo. *Id.* But whether an employee committed a particular act is a question of fact. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We review the ULJ's factual findings "in the light most favorable to the decision." *Id.* In doing so, we "will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Id.* In addition, "[c]redibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Id.* at 345.

An employee who is discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). "Employment misconduct means 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) (2010). "Dishonesty that is connected with employment may constitute misconduct." *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305, 307–08 (Minn. App. 1994) (holding that employee who falsely claimed to have trained store managers committed employment misconduct); *see also Frank v. Heartland Auto. Servs., Inc.*, 743 N.W.2d 626, 630–31 (Minn. App. 2008) (holding that even a single act of dishonest conduct can constitute employment misconduct because employer has the right to rely on integrity of employees).

## I.

Relator argues that the ULJ's factual findings are unsupported by the record because there is insufficient evidence to show that he forged his supervisor's signature. We disagree.

The record reflects that relator's supervisor, Danica Ferk, provided a written statement saying that her signature had been forged on two forms in which relator requested paid time off (PTO). Copies of both PTO forms, as well as a copy of a PTO form with Ferk's original signature that relator had in his possession, were offered as evidence at the hearing. Both PTO forms are in relator's name and when they are compared with the form containing Ferk's actual signature, it is apparent that the signatures are forged. Relator acknowledged at the hearing that the signature on one of the forms appeared to be a forgery.

Further, the record contains a written statement from supervisor Michael Skinner stating that relator personally presented him with one of the forged PTO forms and informed him that he had been approved for the time off. When Skinner checked TAG's attendance spreadsheet to see whether PTO had actually been granted for that date, he saw that no PTO had been approved for relator. He then showed the PTO form to Ferk, and she immediately recognized that the signature on the form was not hers. The record also reflects that human resources manager Angie Wieck investigated the issue and discovered another PTO form that relator had used the previous day to leave early from his shift. Ferk also examined this form and saw that the signature was not hers.

Although relator contends that he simply found the PTO forms on his desk and assumed they had been signed by Ferk, the ULJ was not persuaded by relator's testimony and concluded that his version of events was simply not credible. Credibility determinations are within "the exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus*, 721 N.W.2d at 345.

There is substantial evidence in the record to support the ULJ's finding that relator forged his supervisor's signature on the two PTO forms and was discharged for this reason. Relator does not contest that forging a supervisor's signature to receive paid-time-off constitutes employment misconduct.

## **II.**

Relator also contends that the hearing was unfair for several reasons. He first argues that he was prejudiced by TAG's presentation of certain evidence that he was unable to view. During the hearing, TAG's representative was asked whether there were any other instances of dishonesty or forgery by relator. She testified about a previous instance where relator left work and did not return, instead leaving a message stating that he could not return to work because he was detained by police on an outstanding warrant. Relator denied leaving such a message. The ULJ left the record open for TAG to submit a CD recording of the message; however, the CD that relator received did not work. He argues that the ULJ erred by closing the record without ordering TAG to send him another copy of the CD. We disagree.

The ULJ made it clear in her order that she did not consider the incident in reaching her decision. The ULJ's conclusion that relator was discharged for employment

misconduct was based solely on her finding that relator forged his supervisor's signature—not any earlier incidents.

Relator also argues that the hearing was unfair because the ULJ assisted TAG in its presentation of evidence, but did not assist relator. We find no merit to this argument. The hearing transcript reflects that the ULJ received several exhibits submitted by TAG. The ULJ asked relator if he had objections to any of these documents and he responded that he did not. Further, the record does not indicate that relator provided the ULJ with any documents or otherwise sought to introduce any evidence. Relator was informed at the beginning of the hearing that he had “the right to request that the hearing be rescheduled so that documents or witnesses can be subpoenaed.” During the hearing, relator referred to no documents or evidence that would corroborate his testimony; on appeal he does not identify any evidence that he wished to submit. Further, our review of the record indicates that the ULJ properly ensured that the relevant facts were “clearly and fully developed.” *See* Minn. Stat. § 268.105, subd. 1(b) (2010).

Relator finally argues that the ULJ treated him unfairly because she used his misstatement on his application for benefits as an inference against him. Once again, we find no merit to this argument. In her findings of fact and decision, the ULJ noted that relator “knew he was discharged because of the allegations of forgery, yet he reported to the Department on his initial questionnaire that he was discharged because of attendance.” The ULJ stated that “[t]his is clearly a false statement and diminishes [relator's] credibility.” The record supports the ULJ's finding that relator failed to disclose in his initial questionnaire that he had been discharged for forging his

supervisor's signature but instead reported that he was discharged for unsatisfactory attendance. The record also supports the finding that relator knew he was discharged for forging his supervisor's signature. The ULJ properly cited this as a reason for discrediting relator's testimony. *See* Minn. Stat. § 268.105, subd. 1(c) (2010) (providing that if a ULJ bases his or her decision on the credibility of a party or witness, the ULJ must set out reasons for crediting or discrediting the testimony).

**Affirmed.**