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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1774**

Debra Girdeen,
Relator,

vs.

Fairview Red Wing Health Services (Corp),
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed June 13, 2011
Affirmed
Stauber, Judge**

Department of Employment and Economic Development
File No. 25513169-3

Debra Girdeen, Ellsworth, Wisconsin (pro se relator)

Fairview Red Wing Health Services, Red Wing, 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 Worke, Presiding Judge; Stauber, Judge; and
Willis, Judge.*

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

UNPUBLISHED OPINION

STAUBER, Judge

Relator challenges the decision by the unemployment-law judge (ULJ) that she was discharged for misconduct for failing to abide by hospital policy and the Health Insurance Portability and Accountability Act (HIPAA) privacy laws despite a warning and is therefore ineligible for unemployment benefits. She argues that (1) she did not know that her actions amounted to a HIPAA violation and (2) her actions arose out of concerns for a patient. We affirm.

FACTS

Relator Debra Girdeen worked as a file clerk for Fairview Red Wing Health Services from January 25, 1996, until June 15, 2010. She was discharged for accessing a patient's medical records in violation of Fairview's policy and the HIPAA. Her final wage was \$16.42 per hour.

Relator had received training regarding Fairview's confidentiality policy and HIPAA privacy laws. She signed an agreement acknowledging that she received, read, and understood a Fairview handbook titled "Understanding the HIPAA Privacy Rule." An excerpt from this handbook states Fairview's general policy that an employee may access a patient's health information only when necessary to perform his or her job duties. Fairview also provided annual training on HIPAA rules and gave examples of what is considered a HIPAA violation.

Relator was given several warnings for HIPAA violations leading up to her discharge. In June 2004, relator received a "notice of corrective action" for accessing a

patient's health information on five separate occasions. The notice stated that relator could access patient health information only when doing so is required to perform her job functions. The notice also stated that relator was to request patient health information through the Health Information Management (HIM) office rather than obtain it independently by computer. The notice further advised relator that "[f]uture HIPAA violations will result in corrective action up to and/or including termination of employment." Relator testified at the hearing that the patient was her aunt, and she was only checking her appointments and helping with her healthcare.

In April 2010, relator received another notice of corrective action and was given a two-day "decision-making leave" in regard to an incident involving a HIPAA violation and for opening another person's mail. Relator mislabeled a CD with the wrong patient's name, which resulted in the patient's health information being sent to and viewed by a third party. The CD was mailed back to Fairview at the request of HIM manager Deb Samuelson. Although the envelope was addressed to Deb Samuelson and marked confidential, relator opened it and viewed the images. This notice of corrective action once again stated that relator could be terminated for further violations.

On June 9, 2010, relator was checking in an 81-year-old woman for a mammogram. Her only duty was to access an arrival list on the computer and place a check mark by the patient's name, thereby notifying a mammogram technician that the patient had arrived for her appointment. Relator, however, accessed the patient's medical information, reportedly out of concern for the patient's well-being. The elderly patient was accompanied by a family member who relator felt was a "creep." Relator testified

that she was concerned that the patient may have been a vulnerable adult, and she was looking to see whether the patient's chart listed any other family members to take care of her. After a co-worker reported the incident, relator was questioned by a supervisor. Relator initially lied about why she accessed the patient's chart, saying that she was looking for a mammogram order. However, relator returned to the supervisor's office later and reported that she accessed the information because she was concerned the patient was a vulnerable adult. Relator was then discharged because this was her third HIPAA violation.

Relator applied for unemployment benefits, and the Department of Employment and Economic Development (DEED) determined that she was discharged for employment misconduct and was therefore ineligible for benefits. Relator appealed, and a ULJ held a de novo hearing. The ULJ found that relator was discharged for employment misconduct and was ineligible for benefits. The ULJ affirmed her decision on reconsideration, and this certiorari appeal followed.

D E C I S I O N

Relator argues on appeal that she did not know that her actions amounted to a HIPAA violation and that she was trying to prevent a patient from being harmed.

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, an appellate court "will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Id.*

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).

We conclude that the record contains sufficient evidence to support the ULJ's finding that relator was discharged for employment misconduct. Relator was well aware of Fairview's policy that she was allowed to access patients' health information only when necessary to perform her job functions. She was all the more aware of this policy because she had received warnings for violating it in the past. Relator acknowledged that her only duty in checking in the 81-year-old patient was to mark on the computer that the patient had arrived. She had no reason to access the patient's chart.

Although relator may have been concerned that the patient was a vulnerable adult, relator also acknowledged that she knew of no vulnerable-adult exception to Fairview's policy or HIPAA privacy laws. It is unclear from relator's explanation what she planned

to do if the patient's chart confirmed that the patient was a vulnerable adult or how accessing the chart could have assisted the patient. Relator's supervisor testified that if relator had concerns about the patient, relator should have spoken with the patient's physician, a social worker, or a supervisor, but under no circumstances should relator have accessed the patient's medical information.

Relator argues only that she acted out of concern for the patient, and that no harm resulted from her actions. However, an employee's good-faith belief in the wisdom of her actions is "irrelevant" when the employee refuses to abide by an employer's reasonable requests. *See Soussi v. Blue & White Serv. Corp.*, 498 N.W.2d 316, 318 (Minn. App. 1993) (rejecting the argument that an employee can ignore reasonable policy or instruction from employer if acting in good faith or to benefit employer). The relevant inquiry is not whether relator's termination from employment was just or equitable, but simply whether she engaged in employment misconduct as defined in Minn. Stat. § 268.095, subd. 6(a). *See Brown v. Nat'l Am. Univ.*, 686 N.W.2d 329, 332 (Minn. App. 2004) (stating that "[w]e are not concerned with whether or not the employee should have been discharged but only with the employee's eligibility for benefits after termination of employment"), *review denied* (Minn. Nov. 16, 2004). Fairview's policy regarding accessing patients' health information is reasonable. This court has recognized that hospitals have the right to expect their employees to keep patient health information confidential and that failure to do so may constitute employee misconduct. *See, e.g., Grp Health Plan, Inc. v. Lopez*, 341 N.W.2d 294, 297 (Minn. App. 1983).

Affirmed.