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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1343**

Vandell L. Morehead,
Relator,

vs.

Mission Healthcare, L.L.C.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 11, 2012
Reversed
Huspeni, Judge***

Department of Employment and Economic Development
File No. 27373394-4

Vandell L. Morehead, North Charleston, SC (pro se relator)

Mission Healthcare, L.L.C., St. Paul, Minnesota (respondent employer)

Lee B. Nelson, Department of Employment and Economic Development (for respondent
department)

Considered and decided by Johnson, Chief Judge; Bjorkman, Judge; and Huspeni,
Judge.

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

UNPUBLISHED OPINION

HUSPENI, Judge

Relator Vandell Morehead challenges the determination of an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he was discharged for employment misconduct after failing to return to work or contact his employer after his medical leave expired. The findings of the ULJ are not supported by evidence in the record and we reverse.

FACTS

Relator worked as a housekeeper, doing cleaning and maintenance work at a nursing home operated by respondent Mission Healthcare. Relator developed pain and swelling in his knee. He sought medical care and was unable to work after November 11, 2010. On December 2, 2010, relator's doctor provided documentation for the employer, confirming that relator could not work and required additional follow-up care. The employer approved a medical leave of 12 weeks on December 6, 2010.

The employer's notice to relator about the approved medical leave was not submitted to the ULJ and is not in the record. The employer's witness testified that the documents provided to relator (a) indicated that he could not return to work without a doctor's note stating that he was "able to work without restrictions," (b) stated that he had been approved for 12 weeks of medical leave, "starting November 12," and (c) did not give "him a date" on which his medical leave would expire. The employer's witness also testified that a letter was mailed to relator on February 21, 2011, informing him that his leave had expired on January 31, that he could request additional leave, and that failure to

contact the employer would be treated as a resignation. But that letter was returned to the employer and never delivered to relator. After the letter was returned, the employer made a phone call to relator on March 4, 2011, leaving a message about the returned letter and asking relator to contact the employer. Relator did not respond and the employer deemed him to have resigned effective March 11, 2011.

The ULJ found that relator “was provided copies” of forms relating to his medical leave, “which informed him that his approved leave would be for 12 weeks and would end January 31, 2011”; that relator “failed to maintain contact with the employer and failed to provide documentation to support a continued medical leave”; and that he was discharged for misconduct. Relator appeals from the denial of reconsideration.

D E C I S I O N

This court reviews a ULJ decision denying benefits to determine whether the findings, inferences, conclusions, or decision are affected by errors of law or are unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d) (2010). The factual determinations of the ULJ will be upheld if supported by substantial evidence, but “whether the act committed by the employee constitutes employment misconduct is a question of law, which we review de novo.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

An employee discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). Intentional or indifferent conduct “that displays clearly . . . a serious violation” of standards established by the employer or “a substantial lack of concern for the employment” constitutes

misconduct. *Id.*, subd. 6(a) (2010). Employers may “establish and enforce reasonable rules governing absences from work” and an employee’s refusal to comply with these rules and policies may constitute misconduct. *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 28 (Minn. App. 2007). Failure to return to work after a medical leave ends, “in deliberate and direct contravention of the employer’s directive to return to work” or to “seek additional medical leave” may demonstrate an employee’s “lack of concern” for the job and be characterized as disqualifying misconduct. *Fresonke v. St. Mary’s Hosp.*, 363 N.W.2d 328, 330 (Minn. App. 1985). But a good-faith misunderstanding about “the employer’s rules or policies does not constitute misconduct.” *Tuckerman Optical Corp. v. Thoeny*, 407 N.W.2d 491, 493 (Minn. App. 1987).

Although the ULJ found that relator “was provided copies” of forms that “informed him” that his medical leave “would end January 31, 2011,” this finding is unsupported by the record and inconsistent with the testimony of both the employer’s witness and the relator. The employer’s witness testified that the paperwork provided to the relator when his leave was approved in December 2010 “would not have given him a date” to return to work. And the letter telling him that the leave had expired and that he needed to contact the employer was returned to the employer and never delivered to relator. The evidence in the record establishes that the first time that relator was

informed that he needed to contact the employer to retain his job or seek additional leave was in the phone message left by the employer on March 4, 2011.¹

The ULJ concluded that relator was discharged “on March 4, 2011” for employment misconduct. But the record establishes that relator (a) had provided medical documentation for his leave of absence as requested by the employer; (b) was not able to work without restrictions, which was the condition established by the employer for returning to work; and (c) did not disregard a directive to return to work or seek additional leave before March 4, 2011. Because the decision is not supported by substantial evidence and the ULJ erred in concluding that relator was discharged on that date for disqualifying employment misconduct, we reverse.

Reversed.

¹ Other findings made by the ULJ include two in which incorrect, although irrelevant, dates of employment and mailings were stated. But our concerns include the following: The employer’s witness testified that the February 21 letter was returned to the employer and never delivered to the relator; the ULJ found that *relator’s* testimony that he never received the letter “was illogical [and] self-serving.” The employer’s witness testified that relator’s employment terminated on March 11, 2011. The ULJ actually confirmed, on the record, that “the employer deemed him to have resigned effective 3-11,” but then the ULJ found that relator “was discharged” on March 4, 2011. These findings are not supported by substantial evidence—or any evidence—in the record. *See* Minn. Stat. § 268.105, subd. 7(d) (providing that this court may reverse if findings are unsupported by substantial evidence in the record as submitted).