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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0712**

Dawn Marie Jewett,
Relator,

vs.

HealthEast Care System,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed January 22, 2013
Affirmed
Johnson, Chief Judge**

Department of Employment and Economic Development
File No. 28684107-4

Dawn Jewett, Brooklyn Park, Minnesota (pro se relator)

Richard R. Voelbel, Felhaber, Larson, Fenlon & Vogt, Minneapolis, Minnesota (for
respondent HealthEast Care System)

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Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Johnson, Chief Judge; Bjorkman, Judge; and Crippen,
Judge.*

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

UNPUBLISHED OPINION

JOHNSON, Chief Judge

HealthEast Care System terminated the employment of Dawn Marie Jewett, a nurse, because she failed to follow its internal policies regarding the administration of prescription medication. An unemployment law judge determined that Jewett is ineligible for unemployment benefits because she was discharged for employment misconduct. We affirm.

FACTS

Jewett worked as a licensed practical nurse (LPN) at the HealthEast Bethesda Hospital in St. Paul from May 1999 until her termination in October 2011. Her termination followed an investigation that arose from a routine audit. The investigation showed that, on multiple occasions, Jewett withdrew prescription medication from a dispenser but failed to document her administration of the medication in patient records.

Specifically, the investigation revealed that Jewett failed to account for medication on six occasions. On June 11, 2011, Jewett removed a five-milligram dose of methadone from the dispenser but failed to document whether it was given to the patient, returned, or wasted. On June 17, 2011, Jewett removed a ten-milligram dose of oxycodone but again failed to account for it. On June 26, 2011, Jewett removed two five-milligram doses of oxycodone but documented the administration of only one five-milligram dose. On July 9, 2011, Jewett removed one ten-milligram dose of oxycodone but again failed to account for it. On July 25, 2011, Jewett removed two five-milligram tablets of oxycodone-acetaminophen but documented the administration of only one tablet. And on

September 16, 2011, Jewett removed three ten-milligram tablets of methadone but once again failed to account for them.

On September 30, 2011, HealthEast suspended Jewett. HealthEast later determined that Jewett had violated HealthEast internal policies as well as state and federal law. On October 11, 2011, HealthEast terminated Jewett's employment on the ground that she failed to follow policies and procedures concerning the administration of prescription medication.

Jewett applied for unemployment benefits. The Department of Employment and Economic Development initially determined that she is eligible for benefits. HealthEast pursued an administrative appeal to an unemployment law judge (ULJ), who held an evidentiary hearing in November 2011. In her testimony, Jewett offered several explanations for her conduct, the primary one being that she did not receive adequate training after HealthEast switched to an electronic-record system in June 2011. In a written decision, the ULJ stated that Jewett's "testimony was not credible" and that "[h]er testimony as to the incidents and her excuses were not plausible." The ULJ found that Jewett engaged in employment misconduct and concluded that she is ineligible for benefits. Jewett requested reconsideration, but the ULJ affirmed her earlier decision. Jewett appeals.

DECISION

Jewett argues that the ULJ erred by determining that she engaged in employment misconduct and, thus, is ineligible for unemployment benefits. This court reviews a ULJ's decision denying benefits to determine whether the findings, inferences,

conclusions, or decision are affected by an error of law or are unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d) (2012). The ULJ's factual determinations 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 who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2012). The definition of employment misconduct includes "intentional, negligent, or indifferent conduct, on the job or off the job that displays clearly . . . a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee." *Id.*, subd. 6(a)(1). In determining whether an employee committed employment misconduct, the employee's conduct "must be considered in the context of her job responsibilities." *Frank v. Heartland Auto. Servs., Inc.*, 743 N.W.2d 626, 630 (Minn. App. 2008).

In this case, the ULJ concluded that Jewett's "conduct at the very least showed a reckless disregard for or negligence in the handling of narcotic medications so as to display clearly a serious violation of the standards of behavior the employer has the right to reasonably expect of Jewett as an employee." The ULJ rejected Jewett's argument that the absence of documentation was caused by a lack of training or problems with a new electronic-records system. In denying Jewett's request for reconsideration, the ULJ reasoned that "[t]he evidence failed to show Jewett's conduct to be an isolated incident of

error or mistake [because] Jewett on several occasions negligently failed to perform narcotic handling and scanning duties required of her.”

Jewett challenges the ULJ’s decision on two grounds. First, she contends that she did not commit employment misconduct because she did not receive the proper training or because the absence of documentation was caused by a glitch in a new electronic-records system. During the evidentiary hearing, Jewett offered these explanations for why she did not document the disposition of the controlled substances at issue. But, as noted above, the ULJ stated that Jewett’s “testimony was not credible” and that her “testimony as to the incidents and her excuses were not plausible.” We defer to the ULJ’s credibility determinations. *Skarhus*, 721 N.W.2d at 344.

Accordingly, the question to be answered is whether Jewett’s conduct was a serious violation of the standards of behavior that HealthEast has the right to reasonably expect from its employees. *See* Minn. Stat. § 268.095, subd. 6(a)(1); *Frank*, 743 N.W.2d at 630. “An employer has a right to expect that its employees will abide by reasonable instructions and directions.” *Vargas v. Northwest Area Found.*, 673 N.W.2d 200, 206 (Minn. App. 2004), *review denied* (Minn. Mar. 30, 2004). As a general rule, an employee’s failure “to abide by an employer’s reasonable policies and requests” constitutes misconduct. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). This is especially so in the context of medical care, where “militarylike discipline is required.” *Ress v. Abbott Northwestern Hosp. Inc.*, 448 N.W.2d 519, 525 (Minn. 1989).

Jewett's responsibilities as an LPN included the accurate documentation of prescription medication that she removed from a dispenser. Her responsibilities are governed by several internal policies, which HealthEast distributes to its employees during orientation and upon any revisions to the policies. Jewett testified that she did not remember whether she had received all of the policies, but she admitted being aware of each of the required steps of documentation that is included in the relevant policies. Accordingly, the evidence supports the ULJ's finding that HealthEast had a right to reasonably expect that Jewett would follow its policies by accurately documenting her administration of prescription medication.

Second, Jewett contends that she did not commit employment misconduct because she never received a warning regarding the conduct for which she was terminated. But a prior warning is not necessarily required for a finding of employment misconduct. *Auger v. Gillette Co.*, 303 N.W.2d 255, 257 (Minn. 1981); *see also Brisson v. City of Hewitt*, 789 N.W.2d 694, 697 (Minn. App. 2010) (holding that policy expressly forbidding certain conduct is unnecessary if employer could reasonably expect employee to not engage in that conduct). The question is whether HealthEast had the right to reasonably expect Jewett to follow its policies concerning documentation of the administration of prescription medication. *See* Minn. Stat. § 268.095, subd. 6(a)(1); *Frank*, 743 N.W.2d at 630. Given the undisputed seriousness of Jewett's violations, a warning was unnecessary to put her on notice that failure to comply with those policies would be deemed misconduct.

In sum, the ULJ did not err by determining that Jewett is ineligible for unemployment benefits because she engaged in employment misconduct.

Affirmed.