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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2151**

Tracy Newman,
Relator,

vs.

Children's Health Care,
Respondent,

Department of Employment
and Economic Development,
Respondent.

**Filed August 19, 2013
Affirmed
Hudson, Judge**

Department of Employment
and Economic Development
File No. 30071014-3

Tracy Newman, Vadnais Heights, Minnesota (pro se relator)

Children's Health Care, Minneapolis, Minnesota (respondent employer)

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

Considered and decided by Hudson, Presiding Judge; Schellhas, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

In this certiorari appeal from a decision by an unemployment-law judge (ULJ) that relator is ineligible for unemployment benefits because she was discharged for employment misconduct for forging her supervisor's name, relator challenges the finding that she did so. Because we defer to the ULJ's credibility determinations, we affirm.

FACTS

Relator Tracy Newman was employed as a part-time health unit coordinator by respondent Children's Health Care (CHC). Her duties included data entry, working with patients' families, routing doctor's orders to the appropriate departments, and other receptionist duties.

In December 2011, relator was asked by Ramsey County Community Human Services (county) to complete a form in order to reapply for public health benefits for her minor children. The form required relator to complete the top portion and for relator's employer to complete the bottom portion. Relator completed the form and faxed it to the county on December 21, 2011.

On July 16, 2012, relator's supervisor, Karen Martin, received a call from the county asking for additional information regarding the form that relator submitted. Martin asked the county to fax a copy of the form to her. Upon receiving the fax, Martin noticed that the document had her signature on it, but that she did not recognize it as her signature and did not believe she had ever seen the form before. That same day, Martin confronted relator about the form. Relator denied forging Martin's signature on the form

and stated that she believed someone at the county must have signed her name. Relator requested, and was provided with, a copy of the form that was faxed to Martin by the county.

Subsequently, both relator and Martin contacted the county to figure out what had happened. According to Martin, a representative from the county stated that it is not their policy to sign someone else's name on a form. But, according to relator, she was told that the county sometimes contacts the employer by phone and would indicate that on the form. Relator stated that she believes someone at the county signed Martin's name but did not indicate that they had spoken to her by phone.

Martin attempted to contact relator twice to request that relator meet with her on July 20 to discuss the incident, which was the next time relator was scheduled for work. Relator refused to meet with Martin and called in sick to work that day. Martin again attempted to contact relator to tell her that she should not come to work until after they discussed the incident and that she wanted to meet with relator on July 23. On the evening of July 22, relator left a voicemail for Martin stating that an attorney had instructed her not to meet with Martin face-to-face until she obtained more information, and that relator felt "very threatened" by Martin. On July 24, Martin notified relator that she was terminated from employment.

Subsequently, relator sought unemployment insurance benefits but was denied. Relator appealed the ineligibility determination, and a hearing was held before a ULJ by telephone. Relator appeared pro se, and respondent CHC was represented by Martin. At

the hearing, relator reiterated her position that she never forged Martin's signature on the insurance document and that someone from the county must have signed Martin's name.

Following the hearing, the ULJ issued a decision finding that relator forged her employer's signature and affirming the determination of ineligibility. The ULJ concluded that relator's forgery was a serious violation of her employer's expectations, and therefore she had committed employment misconduct. Relator requested reconsideration, and the ULJ affirmed the decision. This certiorari appeal followed.

D E C I S I O N

On a certiorari appeal, this court may reverse or modify a decision of a ULJ "if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusions, or decision are . . . unsupported by substantial evidence in view of the entire record." Minn. Stat. § 268.105, subd. 7(d)(5) (2012).

An applicant is ineligible for unemployment benefits if the applicant was discharged for "employment misconduct," which is defined as "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." Minn. Stat. § 268.095, subd. 4(a), 6(a) (2012). Relator does not dispute that forging an employer's signature on a document amounts to employment misconduct justifying an applicant's ineligibility for unemployment benefits.

"Whether an employee committed employment misconduct is a mixed question of fact and law." *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008),

review denied (Minn. Oct. 1, 2008). Whether an act was committed is a question of fact; but, whether the act constitutes employment misconduct is a question of law, which this court reviews de novo. *Id.* On appeal, this court reviews the ULJ's fact findings in the light most favorable to the decision, giving deference to the ULJ's credibility determinations. *Id.* "[T]his court will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Id.*

Relator asserts that it was error to find that she forged her supervisor's signature, arguing that she lacked any motive to do so because it would have threatened her employment with CHC and her supervisor would have willingly signed the document had she asked. "Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006). "When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the [ULJ] must set out the reason for crediting or discrediting that testimony." Minn. Stat. § 268.105, subd. 1(c) (2012).

In the decision affirming relator's ineligibility determination, the ULJ stated that relator's testimony was not credible because it was self-serving, because it was highly unlikely that anyone else would have signed Martin's name, because relator supposedly had documentary proof in support of her position but never presented it to CHC, and because she refused to meet with Martin after she was confronted with the forgery allegation. In *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 532–33 (Minn. App. 2007), this court listed several factors that are relevant to determining the credibility

of a witness, including whether a witness will gain or lose if the case is decided a certain way, and whether the testimony is reasonable compared with other evidence. The ULJ's decision reflects that he relied on these relevant factors in making his credibility determinations. The evidence shows that relator was confronted by her supervisor immediately upon the discovery of the alleged forgery. Relator denied forging the document, and asserted that she had a copy of the original document she faxed to the county but never showed the document to CHC. Relator also asserted that she did not have enough time to respond to the forgery allegation. But, relator was accused of forgery on July 16, and was not discharged until July 24, and she refused two opportunities to explain her actions to her supervisor.

In addition, Martin testified that the signature on the document could not have been hers because the phone and fax numbers provided on the document are not correct and that when she signs a document she always writes the correct numbers for her personal phone and fax machine. The ULJ found Martin's testimony credible. Moreover, Denise Fitzgerald, an employee with CHC's human resources department, testified that it is company policy to have staff in CHC's employer service center complete this form for their employees, and that they frequently sign this form but never sign anyone else's name to the documents, nor do they have employees print the forms and fax them themselves as relator did. Although the record does contain a copy of what appears to be the unsigned version of the document that relator asserts she submitted to the county, there is substantial evidence and testimony in the record to support the ULJ's

finding that the true document is the one submitted by CHC showing the forged signature.

Affirmed.