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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2279**

Bradley Nelson,
Relator,

vs.

Hoglund Bus Co., Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 5, 2013
Affirmed
Willis, Judge***

Department of Employment and Economic Development
File No. 30251287-3

Bradley Nelson, Rice, Minnesota (pro se relator)

Hoglund Bus Co., Inc., Monticello, Minnesota (respondent)

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

Considered and decided by Hooten, Presiding Judge; Kalitowski, Judge; and Willis,
Judge.

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

UNPUBLISHED OPINION

WILLIS, Judge

Relator appeals the decision of an unemployment-law judge (ULJ) that he was ineligible to receive unemployment benefits because he was discharged from employment due to employment misconduct. We affirm.

FACTS

Relator Bradley Nelson was employed by Hoglund Bus Company (Hoglund) as a parts salesman, and he used a company vehicle bearing the company's logo to visit customers and deliver parts along a sales route. Nelson did not have specified work hours but was expected to work for at least eight hours each workday. If Nelson finished his route before he had worked eight hours, he was expected to make telephone calls to customers until the end of his shift.

In September 2012, Hoglund evaluated Nelson's use of the company vehicle by reviewing GPS tracking data for the vehicle. The GPS data showed that the vehicle was frequently parked outside a local bar for long periods on workdays. On or about September 11, 2012, Nelson's supervisor spoke with him about his work schedule, and Nelson admitted that he had stopped at the bar at the times and for the periods of time that the GPS data indicated. Nelson stated that he went there for lunches and after he completed his sales routes, that he went there to get food and to gamble, and that he did not consume alcohol there during his workday. Nelson's supervisor reminded him that he needed to work for at least eight hours each workday and warned him against taking excessive breaks.

On September 21, 2012, Nelson failed to work for eight hours and again went to the bar in the company vehicle. Hoglund discharged Nelson from employment on September 24, 2012. Nelson then applied for unemployment benefits and was deemed eligible to receive benefits. Hoglund appealed the eligibility determination, claiming that Nelson was discharged for spending time in a bar during work hours when he should have been performing work duties. Hoglund also claimed that Nelson had been told by his supervisor that it was not appropriate to have the company vehicle parked outside a bar.

Following an evidentiary hearing, the ULJ ruled that Nelson was ineligible to receive unemployment benefits because he was discharged due to employment misconduct. The ULJ found that Nelson failed to work for the expected eight hours on September 21 and failed to heed his supervisor's warning that it was not acceptable to have the company vehicle parked outside a bar. The ULJ concluded that Nelson "seriously violated Hoglund's reasonable expectations" and "demonstrated a substantial lack of concern for his employment." The ULJ affirmed his decision on reconsideration, and this certiorari appeal follows.

D E C I S I O N

An employee who was discharged because of employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2012). "Employment misconduct" 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." *Id.*, subd. 6(a) (2012). Whether an employee engaged in

employment misconduct is a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether an employee committed a particular act and whether that act was the reason for discharge are questions of fact. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). We review a ULJ's factual findings in the light most favorable to the decision, giving deference to the ULJ's credibility determinations and not disturbing the findings when the evidence substantially sustains them. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). But whether a particular act constitutes employment misconduct is a question of law, which is reviewed de novo. *Schmidgall*, 644 N.W.2d at 804. Refusing to abide by an employer's reasonable policies and requests generally is employment misconduct. *Id.*

Nelson does not challenge the ULJ's finding that he was informed of the expectation that he work for at least eight hours each workday and that he failed to work for eight hours on September 21. Hoglund had the right to reasonably expect that Nelson would work eight hours each workday even if he completed his route early. Nelson's failure to work for eight hours during a workday occurred shortly after he was reminded of his obligation to do so. This failure was a serious violation of the standards of behavior that Hoglund had the right to reasonably expect and displayed a substantial lack of concern for employment. See *Psihos v. R & M Mfg.*, 352 N.W.2d 849, 850 (Minn. App. 1984) (holding that a single unexcused departure from work before the end of a shift is employment misconduct).

The ULJ also found that Nelson failed to heed his supervisor's warning that having the company vehicle bearing the company's logo parked outside of a bar was unacceptable.

Nelson contends that he was never told where he should or should not park the company vehicle. But the ULJ found credible Hoglund's claim that Nelson had been warned about this issue, and we give deference to this credibility determination. *See Peterson*, 753 N.W.2d at 774; *see also Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006) ("Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal."). Hoglund had the right to reasonably expect that a company vehicle bearing the company's logo would not be parked outside a bar. Nelson failed to heed his supervisor's warning. This failure was a serious violation of the standards of behavior that Hoglund had the right to reasonably expect and displayed a substantial lack of concern for the employment.

Nelson maintains that the actual reason for his discharge was that Hoglund was concerned about its potential liability if he was consuming alcohol at the bar and then driving the company vehicle. Nelson raised this argument to the ULJ, but the ULJ found credible Hoglund's claims that Nelson was discharged for spending time in the bar when he should have been working and for parking the company vehicle outside a bar. We must give deference to these credibility determinations. Because Nelson was discharged from employment for behavior that constitutes employment misconduct, the ULJ did not err by ruling that Nelson was ineligible to receive unemployment benefits.

Affirmed.