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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1810**

Brian Stuckey,
Relator,

vs.

North Oaks Holiday and Auto Service, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent

**Filed June 9, 2014
Affirmed
Klaphake, Judge ***

Department of Employment and Economic Development
File No. 31285611-3

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Considered and decided by Larkin, Presiding Judge; Stauber, Judge; and
Klaphake, Judge.

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

Relator Brian Stuckey was discharged from his job as an automotive technician at respondent North Oaks Holiday and Auto Service, Inc., after several instances of inattentiveness in servicing customers' vehicles. Because substantial evidence supports the unemployment-law judge's (ULJ) decision that relator committed employment misconduct, which rendered him ineligible for unemployment benefits, we affirm.

DECISION

This court reviews a ULJ's decision to determine whether the findings, inferences, conclusions, or decision are affected by an error of law, are unsupported by substantial evidence in view of the entire record, or are arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2012).

Relator argues that the ULJ erred in determining that he engaged in misconduct. "Whether an employee committed employment misconduct is a mixed question of fact and law." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). "Whether the employee committed a particular act is a question of fact." *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). "Factual findings are reviewed in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ, and will not be disturbed when the evidence substantially sustains them." *Lawrence v. Ratzlaff Motor Express Inc.*, 785 N.W.2d 819, 822 (Minn. App. 2010), *review denied* (Minn. Sept. 29, 2010); *see also Nichols v. Reliant Eng'g & Mfg., Inc.*, 720 N.W.2d 590, 594 (Minn. App. 2006) (stating

that this court defers to ULJ's determinations on conflicting evidence). Whether a particular act constitutes disqualifying misconduct is a question of law subject to de novo review. *Stagg v. Vintage Place, Inc.*, 796 N.W.2d 312, 315 (Minn. 2011).

An employee who is discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2012). "Employment misconduct" is "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).

Relator argues that the mistakes that he allegedly made did not amount to serious violations. Relator was first discharged in April 2012, after he failed to properly winterize a boat and incorrectly made a routine timing-belt replacement on a vehicle. These errors resulted in the employer bearing the expense of a new boat engine and a \$7,400 new vehicle engine. Relator was given a second chance after he guaranteed that his work would improve.

In mid-2013, relator committed a string of errors. When installing an alternator on a taxi, relator failed to put a bolt in, which damaged the timing cover. The employer had to purchase a new timing cover and the taxi-driver customer was out of work for a week. During a vehicle inspection, relator failed to properly inspect the tires. The employer gave an estimate that did not include tire replacement to the customer, who was driving the vehicle across the country. After relator completed work on another vehicle, the hood flew open, causing major windshield damage. Relator had left a can of carburetor cleaner

underneath the engine of that vehicle. Relator left a pry bar underneath the hood of another vehicle, which made the hood difficult for the customer to open. On another vehicle, relator also failed to attach a caliper bolt, which attaches the caliper to the brake. This conduct demonstrates a serious violation of the employer's standards, and, following the employer's expressed concerns about relator's previous errors, relator's substantial lack of concern for his employment.

Relator denied making most of the mistakes or attempted to mitigate his conduct, but the ULJ determined that "the employer's testimony was more credible than [relator's] testimony. The employer was very detailed and described a more plausible chain of events." This court defers to the ULJ's credibility determinations. *Lawrence*, 785 N.W.2d at 822. Relator also claims that he was not given any written warnings. But a prior warning is not a requirement for a finding of employment misconduct. *Auger v. Gillette Co.*, 303 N.W.2d 255, 257 (Minn. 1981). Moreover, the record reveals that relator received several verbal warnings and had been previously discharged. Relator also suggests that he did not commit serious violations because his employer approved his vacation requests mere weeks before his discharge, and vacation requests are approved only when an employee is meeting expectations. But the record shows that relator's employer always approved relator's vacation requests because of their 13-year employment relationship. The ULJ found the employer's witnesses credible; therefore, automatic approval of relator's vacation request did not indicate that relator did not commit misconduct. *See Lawrence*, 785 N.W.2d at 822 (stating that this court defers to the ULJ's credibility determinations).

Relying on Minn. Stat. §§ 181.961, .963 (2012), relator also argues that the ULJ considered inadmissible evidence because the employer failed to give him his personnel file and used information in the file against him during the hearing. We reject this argument for several reasons. A specific provision of the unemployment statute permits the employer to “provide the commissioner with information on an applicant” to determine whether the applicant is entitled to benefits “[r]egardless of any provision of law to the contrary.” Minn. Stat. § 268.19, subd. 2(a) (2012). Moreover, once the evidence was brought to the attention of the ULJ, the ULJ advised relator that he had “the right to request that the hearing be rescheduled so that documents or witnesses [could] be subpoenaed.” *See* Minn. R. 3310.2914, subpt. 1 (2013) (permitting issuance of subpoenas to compel the production of documents and permitting a party to renew a subpoena request when a party finds an additional need for evidence). Finally, the key evidence from relator’s personnel file was duplicative of evidence offered by the employer through witness testimony at the ULJ hearing. Under these circumstances, the ULJ conducted a fair hearing. *See* Minn. R. 3310.2921 (2013) (stating that the ULJ must conduct a fair hearing and ensure that relevant facts are clearly and fully developed).

Relator claims that he was discharged because he brought to his employer’s attention the failure to pay overtime pay. But there is no evidence in the record to support this argument. Relator was discharged because of employment misconduct and the ULJ did not err in determining that he was ineligible for unemployment benefits. *See*

Minn. Stat. § 268.03, subd. 1 (2012) (stating that the purpose of chapter 268 is to assist those who are unemployed through no fault of their own).

Affirmed.