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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS**

**A06-2231**

Brenda F. Reed,  
Relator,

vs.

Pinnacle Financial Group, Inc.,  
Respondent, and

Department of Employment and Economic Development,  
Respondent.

**Filed January 22, 2008  
Affirmed  
Ross, Judge**

Department of Employment and Economic Development  
File No. 12005 06

Brenda F. Reed, 210 17th Street South, Buffalo, MN 55313 (pro se relator)

Pinnacle Financial Group Inc., 7825 Washington Avenue South, Suite 410, Edina MN  
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respondent Department)

Considered and decided by Dietzen, Presiding Judge; Ross, Judge; and Harten,  
Judge.\*

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

## UNPUBLISHED OPINION

**ROSS**, Judge

Brenda Reed appeals the decision of the Department of Employment and Economic Development denying her request for unemployment benefits after Reed was discharged from employment for leaving work early in violation of her employer's procedure requiring written requests for time off from work. Because the unemployment law judge's finding that Reed's unapproved early departure from work is supported by the record and constitutes employment misconduct, we affirm.

### FACTS

Brenda Reed worked full time for Pinnacle Financial Group from November 2005 until August 18, 2006. Reed had attendance problems, so in February 2006, Pinnacle changed Reed's work schedule. But Reed continued to be late, to be absent, or to leave work early on multiple occasions. Reed was late, absent, or left work early 26 days during the eight months leading up to her termination in August 2006. Six of her absences were caused by her legal or transportation difficulties.

Pinnacle gave Reed a written warning on August 8, 2006, regarding her poor attendance. Reed had been absent on August 1 because she was ill and on August 2 because of a court date related to a drunk-driving charge. She took two hours off on August 3. Reed's twentieth absence of the year was on August 1. As part of the August 8 warning, Reed's supervisor told her that she must follow Pinnacle's attendance policy. This policy requires that an employee complete a written, time-off request and

submit it to her supervisor for prior approval. The request form is then returned to the employee after approval.

On August 17, Reed left work early without submitting a time-off request. She claims that she had completed a request form earlier that week but did not turn it in. When Reed came to work on August 18, she met with her supervisor and the branch manager. During the meeting, Reed explained that she mistakenly believed that she had submitted the written request. She was discharged later that day. After a hearing, an unemployment law judge (ULJ) determined that Reed's early departure was employment misconduct because it had not been approved by her employer. This certiorari appeal follows.

### **D E C I S I O N**

When an employer discharges an employee for employment misconduct, the employee is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2006). Employment misconduct is intentional, negligent, or indifferent conduct that displays clearly either “a serious violation of the standards of behavior the employer has the right to reasonably expect” or “a substantial lack of concern for the employment.” *Id.*, subd. 6(a) (2006). Whether an employee engaged in employment misconduct presents a mixed question of law and fact. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). The material facts are not in dispute here. Whether those facts establish 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). This court will affirm a ULJ's determination unless the decision derives from unlawful procedure,

relies on an error of law, or is unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d)(3)-(5) (2006).

Excessive, unexcused tardiness and absenteeism can constitute employee misconduct. *See McLean v. Plastics, Inc.*, 378 N.W.2d 104, 107 (Minn. App. 1985) (finding misconduct when employee was tardy 13 times in one year and had received two warnings); *see also* Minn. Stat. § 268.095, subd. 6(a) (defining misconduct). Work absences within the control of the employee generally are misconduct. *Winkler v. Park Refuse Serv., Inc.*, 361 N.W.2d 120, 124 (Minn. App. 1985). But if proper notice is given to the employer, illness- or injury-related absence is not misconduct. Minn. Stat. § 268.095, subd. 6(a). Absences that result from proceedings related to a drunk-driving offense may support a finding of misconduct. *Id.*, subd. 6(d).

In challenging the ULJ's misconduct determination, Reed does not deny that she missed work without notice repeatedly for reasons related to her drunk-driving offense. Rather, Reed argues that because her drunk-driving offense was caused by a mental breakdown, the resulting attendance problems should be excluded under the illness-exception provision of Minnesota Statutes section 268.095, subdivision 6(a). She therefore argues that her early departure should be excused as illness-related non-misconduct. We need not address that argument because some of Reed's attendance problems related to her post-breakdown unwillingness or inability to arrange for reliable transportation. There were six court- and transportation-related attendance failures before Reed's dismissal, and these qualify as misconduct. *Id.*, subd. 6(d). Reed's final unauthorized departure supports the ULJ's conclusion.

After occasionally missing work and being reprimanded, Reed left work early without following Pinnacle's procedures for requesting time off in writing. Under the circumstances, this disregard for policy also constitutes misconduct. *See Skarhus*, 721 N.W.2d at 344. It violated Pinnacle's expected standards of reasonable behavior. *See* Minn. Stat. § 268.095, subd. 6(a) (defining employee misconduct as a violation of an employer's expected, reasonable standards of behavior). Because Reed's absence and violation of Pinnacle's procedures for requesting time off violated Pinnacle's expected standards of behavior and showed a lack of concern for Pinnacle, we affirm the ULJ's determination that Reed's actions constituted disqualifying misconduct.

**Affirmed.**