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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-779**

Ruth A. Bender,
Relator,

vs.

Mission Farms Nursing Home Inc.,
Respondent,

Department of Employment
and Economic Development,
Respondent.

**Filed May 13, 2008
Affirmed
Hudson, Judge**

Department of Employment
and Economic Development
File No. 179566

Ruth A. Bender, 3212 Florida Avenue North, Crystal, Minnesota 55427-2234 (pro se relator)

Mission Farms Nursing Home Inc., 3401 East Medicine Lake Boulevard, Plymouth, Minnesota 55441 (respondent)

Lee B. Nelson, Katrina I. Gulstad, Minnesota Department of Employment and Economic Development, First National Bank Building, 332 Minnesota Street, Suite E200, St. Paul, Minnesota 55101-1351 (for respondent Department)

Considered and decided by Worke, Presiding Judge; Hudson, Judge; and Crippen, Judge.*

UNPUBLISHED OPINION

HUDSON, Judge

By writ of certiorari, pro se relator challenges the decision of the unemployment-law judge (ULJ) disqualifying relator from receiving unemployment benefits because she was terminated for employment misconduct. Because the ULJ's decision is supported by substantial evidence and is not arbitrary or capricious, we affirm.

FACTS

Relator Ruth A. Bender was hired on August 27, 2005, by respondent Mission Farms Nursing Home, Inc. (Mission Farms) to work as a part-time dietary cook. Mission Farms is a union employer; when a new employee is hired, its union stewards normally notify the new employee that he or she is expected to join the union. Because Mission Farms "feel[s this decision is] between the employee and the union," human resources personnel do not ask new employees about their union membership. Mission Farms does offer its employees the opportunity to have their union dues automatically deducted from their paychecks, but relator did not choose to do so.

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

Relator claims that, prior to her termination, she was not aware that she was required to join the union, did not realize that she would owe union dues, and was not approached by a Mission Farms union steward. On December 29, 2005, relator's union sent her a letter via certified mail to her home address notifying her that she was "required to become a member of the Union, in good standing" by paying a "standard initiation fee" and union dues. Enclosed with the letter was an application-for-membership card that relator was to return in order to join the union. The letter also stated that relator owed \$87.82 in unpaid dues for the months of December 2005 through January 2006, and that, if she did not pay the dues, she would be terminated from her job. On February 10, 2006, relator's union sent another letter via certified mail to her home address notifying her that she owed \$101.73 in unpaid dues, and again warning her that, if she did not pay the dues, she would be terminated. Relator denies receiving either of these letters, even though she confirmed that her home address was correctly listed on the letters and that she normally did not have problems getting her mail.

Because relator did not pay her dues, the union sent Mission Farms a letter on March 27, 2006 requesting that relator be terminated because she had "not complied with the current Collective Bargaining Agreement Union Security Clause." Mission Farms subsequently sent relator a letter to relator's home address notifying her that her employment was terminated. Relator confirmed that she received this letter, which included a copy of the union's request-for-termination letter.

Following her termination, relator alleges that she called a union representative who told her that she owed back dues, so she paid the dues, even though she had been

terminated. On April 5, 2006, relator's union sent Mission Farms a letter stating that relator was then in "good standing" with the union because she had "taken care of her current obligations" by paying dues. Relator was never rehired by Mission Farms.

Relator applied for unemployment benefits on November 12, 2006, and was subsequently notified by respondent Department of Employment and Economic Development that she was disqualified because she had been discharged for failing to pay union dues. Relator appealed this decision, claiming that she "never did join a union." A telephone hearing was held before an unemployment-law judge (ULJ), who upheld the disqualification because relator had been terminated for employment misconduct. The ULJ determined that "[t]he evidence shows that [relator's] union considered her a member in good standing before December 2005," so relator "knew about her union's requirements and had paid dues before December 2005." The ULJ did not find relator's testimony that she did not receive the union's letters credible because relator "admitted that the address listed on the letters is her address," and the "law presumes that a letter mailed is a letter received." Relator filed a request for reconsideration, but on March 20, 2007, the ULJ affirmed his prior decision. This certiorari appeal follows.

D E C I S I O N

On certiorari appeal, we may affirm an unemployment-law judge's decision, remand it for further proceedings, or reverse or modify it if it is unsupported by substantial evidence or is arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (Supp. 2005). Whether an employee engaged in an act or pattern of conduct that allegedly constitutes employment misconduct is a factual question, but whether the act

constitutes employment misconduct is a question of law reviewed de novo. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). Findings of fact are viewed in the light most favorable to the ULJ's decision, and deference is given to the ULJ's determinations of credibility. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

When an employer discharges an employee for "employment misconduct," the employee is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (Supp. 2005). Minnesota law defines "[e]mployment misconduct" as:

[A]ny intentional, negligent, or indifferent conduct, on the job or off the job (1) that displays clearly a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee, or (2) that displays clearly a substantial lack of concern for the employment.

Minn. Stat. § 268.095, subd. 6(a) (2004). This definition of employment misconduct is exclusive and no other definition shall apply. Minn. Stat. § 268.095, subd. 6(e) (2004). This statute is remedial in nature and must be liberally construed. *Jenkins v. Am. Exp. Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006).

Relator argues that the ULJ erred in determining that she was disqualified from receiving unemployment benefits due to misconduct because: (1) his factual finding that she had joined the union and paid dues prior to December 2005 was false; (2) she did not knowingly and intentionally fail to pay dues because she did not realize that she was required to join the union; and (3) she remedied the situation by paying the dues owed after she was terminated.

Relator is correct in her claim that substantial evidence does not support the ULJ's factual finding that she had joined the union and paid union dues prior to December 2005. The record indicates that relator had not yet joined the union when the first union letter was sent to her on December 29, 2005. In that letter, the union reminded relator of her obligation to join and pay dues and even sent her another application to apply for union membership. The record indicates that, contrary to the ULJ's factual finding on this point, relator had neither joined the union nor paid dues prior to December 2005.

However, the ULJ's error is inconsequential and harmless, and nothing in the record shows that relator was substantially prejudiced by it. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored). The fact that relator did not join the union and pay dues prior to receiving her first warning letter does not change the fact that she violated her employer's mandate that she become a dues-paying member of the union.

Relator claims that she was not notified that she was required to join the union and pay dues because she did not receive the letters sent by the union. There is a presumption, "in the absence of proof to the contrary, that mail properly addressed and sent with postage prepaid is duly received by the addressee." *Nafstad v. Merchant*, 303 Minn. 569, 570–71, 228 N.W.2d 548, 550 (1957). Even though relator denies receipt of the letters, whether the letters were actually received becomes a fact question. *See Nafstad*, 303 Minn. at 571, 228 N.W.2d at 550; *Outcault Adver. Co. v. Farmers' & Merchants' State Bank of Greenbush*, 151 Minn. 500, 501, 187 N.W. 514, 514 (1922). We must view factual findings in the light most favorable to the ULJ's decision, and we defer to the ULJ's determinations of credibility. Substantial evidence supports the ULJ's

conclusion that relator had been notified that she was required to join the union and pay dues. Even if relator's failure to join the union and pay dues was not intentional, it was certainly "negligent or indifferent conduct." *See* Minn. Stat. § 268.095, subd. 6(a) (defining "employment misconduct").

"An employee who was dismissed, pursuant to terms of a collective bargaining agreement, for nonpayment of union dues is not entitled to unemployment compensation benefits." *White v. Metro. Med. Ctr.*, 332 N.W.2d 25, 26 (Minn. 1983) (holding "[w]e cannot charge an employer with the employee's failure to satisfy this obligation [to pay union dues] . . ."). Relator's failure to officially join the union and pay dues between December 2005 and March 2006 disqualifies her from receiving unemployment benefits.

Relator claims that she should be qualified to receive unemployment benefits because she paid her union dues and became a member in good standing after she was terminated. But relator's remedy for her misconduct following her termination does not change the fact that she failed to join the union and pay dues while employed.

Relator also seems to argue that she is suffering economically from being disqualified from receiving unemployment benefits. But we cannot reverse the ULJ's decision on equitable grounds. *See* Minn. Stat. § 268.069, subd. 3 (2004) ("[t]here shall be no equitable or common law denial or allowance of unemployment benefits").

Relator's misconduct of not joining the union and paying union dues demonstrates a serious disregard for her employer's interests and of her duties and obligations, and is a serious violation of the standards of behavior her employer had the right to expect of her. Substantial evidence supports the ULJ's conclusion that relator engaged in employment

misconduct under Minn. Stat. § 268.095, subd. 6(a) (2004), and that she is therefore disqualified from receiving unemployment benefits.

Affirmed.