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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1132**

Ted Rehberger,  
Relator,

vs.

Genuine Parts Company-NAPA,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed April 6, 2010  
Affirmed  
Toussaint, Chief Judge**

Department of Employment and Economic Development  
File No. 21852191-3

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Economic Development)

Considered and decided by Toussaint, Chief Judge; Kalitowski, Judge; and Collins, Judge.\*

## UNPUBLISHED OPINION

**TOUSSAINT**, Chief Judge

Relator Ted Rehberger challenges the decision of the unemployment-law judge (ULJ) that relator is ineligible for unemployment benefits because he was discharged for misconduct. Because we see no error in the determination that realtor's undisputed acts were misconduct within the meaning of Minn. Stat. § 268.095, subd. 6(a) (2008), we affirm.

## DECISION

Whether a particular act is misconduct is a question of law, subject to de novo review. *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Misconduct is "any 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 . . . ." Minn. Stat. § 268.095, subd. 6(a) (2008). Violating an employer's reasonable policies is misconduct. *Schmidgall v. Filmtec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002); *Skarhus*, 721 N.W.2d at 344.

Relator began work as a delivery truck driver for respondent Genuine Parts Company-NAPA, an auto parts supplier, in July 2008. Respondent provided its new employees with a list of prohibited behaviors, including the use of alcoholic beverages on

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

company time or company property and sleeping on the job. Relator's signature shows that he received the list.

Relator was discharged in January 2009. He applied for benefits and was sent a determination of ineligibility because he had been discharged for misconduct, i.e., consuming alcohol on the job. He appealed, and a telephone hearing was scheduled. During the hearing, respondent's store manager testified that he had been informed of an incident on December 24, 2008, in which relator drank beer during the last few minutes of his shift, and of an incident on January 3, 2009, when relator was found sleeping in the break room during his shift. Respondent's human resources manager testified that relator had been discharged, in part, for violating respondent's policies prohibiting consuming alcohol and sleeping on the job.

The ULJ determined that relator was ineligible for benefits because he had committed misconduct by violating these policies.<sup>1</sup> Relator does not dispute that he drank some of the beer that a customer left as a gift for respondent's employees, who were to divide up the case and take it home when they left work. But relator argues that (1) he was offered the beer by a sales associate and did not help himself; (2) he was not aware that alcoholic beverages were not allowed on company property; and (3) the beer drinking was a single incident that had no adverse effect on respondent. None of these arguments is persuasive.

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<sup>1</sup> Respondent's human resources manager testified that relator's "substandard" performance was another basis for his discharge. But the ULJ concluded that relator's performance was not misconduct, and that conclusion is not challenged on appeal.

The ULJ rejected the first argument because the sales associate denied offering beer to relator, and the ULJ found his testimony more credible than relator's. A ULJ's credibility determinations are entitled to deference. *Skarhus*, 721 N.W.2d at 344. The second argument is disproved by relator's signature on the list of prohibited behaviors. The third argument is apparently a reference to language in Minn. Stat. § 268.095, subd. 6(a), providing that misconduct does not include "a single incident that does not have a significant adverse impact on the employer." But the beer drinking was not the only incident; relator was also found sleeping on the job.

In his reply brief, relator challenges the ULJ's finding that he was sleeping on the job. But the finding is supported by testimony. The sales associate testified that, when he needed relator to make a delivery, he yelled relator's name, received no response, looked for relator, found him "laying down with his head on one chair and his legs on another[,]” and tapped him on the shoulder to wake him up. Relator testified that he was sitting on a chair and resting his eyes but not sleeping. The ULJ found the sales associate more credible than relator, and that finding is entitled to deference. *See Skarhus*, 721 N.W.2d at 344. The ULJ did not err in concluding that relator committed misconduct by drinking beer and by going to sleep on the job.

Respondent's policies against consuming alcoholic beverages and sleeping on the job were reasonable, and relator committed misconduct when he violated them.

**Affirmed.**