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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1444**

Kimberly Johnson,
Relator,

vs.

People Enhancing People Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 11, 2010
Affirmed
Toussaint, Chief Judge**

Department of Employment and Economic Development
File No. 22370049-3

Kimberly Johnson, Minneapolis, Minnesota (pro se relator)

People Enhancing People Inc., St. Paul, Minnesota (respondent)

Lee B. Nelson, Britt K. Lindsay-Waterman, Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent Department of Employment and
Economic Development)

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

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

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Relator Kimberly Johnson challenges the determinations of the unemployment-law judge (ULJ) that Johnson committed misconduct and aggravated misconduct, that she was ineligible for benefits, that her wage credits were cancelled, and that she had been overpaid. Because the ULJ's findings are supported by substantial evidence and the decisions are a correct application of the law, we affirm.

DECISION

“Whether the employee committed an act alleged to be employment misconduct is a fact question, but the interpretation of whether that act is employment misconduct is an issue of law.” *Risk v. Eastside Beverage*, 664 N.W.2d 16, 19-20 (Minn. App. 2003). This court reviews a question of law de novo. *See id.* at 20. “Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 345 (Minn. App. 2006).

Respondent People Enhancing People Inc. (PEP) provides its clients, disabled adults, with personal care attendants. Attendants' wages are computed from timecards signed by the client and submitted by the attendant.

Johnson worked as an attendant, earning \$11.85 per hour for 25-30 hours per week, for a PEP client from May 2005 until January 11, 2009, when the client went into the hospital. Johnson continued to submit timecards purportedly signed by the client and to collect paychecks for providing service to the client until March 28, 2009, when PEP noticed that other attendants reported providing care to that client when Johnson claimed

to have been providing care. When Johnson was told that the information on timecards purportedly signed by the client was being investigated, she decided not to go back to work for PEP. She was later discharged.

Johnson applied for unemployment benefits, saying she had been “suspended” from April 3, 2009, until May 1, 2009, for submitting inaccurate documents. She was initially determined to be eligible for benefits because the documents she submitted had not been shown to be inaccurate and were not misconduct. Johnson received \$528 in benefits.

PEP challenged the determination that Johnson was eligible. Johnson did not participate in the telephone hearing, although the ULJ twice tried to reach her at the number she had given. PEP’s client coordinator, its payroll and billing manager, the client Johnson had assisted, and the client’s nurse participated.

The client coordinator testified that Johnson stopped working in early January but continued submitting timecards and collecting her paychecks until the end of March. The billing manager testified that Johnson came in every other Friday to pick up her check; that, on March 14, Johnson reported working the same hours for the same client that another attendant reported working; that the billing manager called the client to verify the hours; and that the client said Johnson had not worked for her since she went into the hospital on January 11.

The client testified that she had not seen Johnson since Johnson left her in the hospital on January 11 and that she had not signed any timecards for Johnson since returning home. She also testified that she keeps a calendar on which her attendants write

their names when they come to work or are scheduled to work. Evidence included the client's February and March calendars signed with names of attendants other than Johnson and the timecards submitted by Johnson and by another attendant for the same hours worked during a pay period in March. The client's nurse testified that she was with the client almost every day at the time Johnson claimed to have been working and that she had not seen Johnson since January.

Based on this testimony and evidence, the ULJ found that Johnson had been paid "well over \$500" for hours claimed but not worked and concluded that she committed employment misconduct by submitting falsified timecards. *See* Minn. Stat. § 268.095, subd. 6(a) (2008) (defining misconduct as intentional, negligent, or indifferent conduct "that displays clearly a serious violation of the standards of behavior the employer has the right to reasonably expect"); *McKee v. Cub Foods, Inc.*, 380 N.W.2d 233, 236 (Minn. App. 1986) (concluding that submitting false information on timecard was misconduct). The ULJ also concluded that Johnson committed aggravated misconduct because taking more than \$500 belonging to PEP was "at least a gross misdemeanor." *See* Minn. Stat. § 268.095, subd. 6a(a)(1) (2008) (defining aggravated misconduct as any act "that would amount to a gross misdemeanor or felony if the act . . . had a significant adverse effect on the employment"); Minn. Stat. § 609.52, subd. 3(4) (2008) (providing sentence of imprisonment of not more than one year or payment of fine of not more than \$3,000 or both for theft of more than \$500 but not more than \$1,000); Minn. Stat. § 609.02, subd. 4 (2008) (defining gross misdemeanor as crime which is not felony or misdemeanor, for which maximum fine is \$3,000).

The ULJ determined that Johnson was ineligible for benefits, that her wage credits from PEP were cancelled, and that she had been overpaid \$528. Johnson requested reconsideration on the ground that the ULJ's factual findings were untrue, but she offered no evidence. The ULJ affirmed the decision.

Absent any evidence contrary to the ULJ's findings and any indication that the conclusions are contrary to law, there is no basis to reverse the ULJ's decision.

Affirmed.