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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1601**

Tia Dvorak,
Relator,

vs.

Hands of Hope Resource Center Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed June 8, 2010
Affirmed
Minge, Judge**

Department of Employment and Economic Development
File No. 22660059-3

Tia M. Dvorak, Clarissa, Minnesota (pro se relator)

Jason M. Hastings, Hastings & Nice, PLLP, Fergus Falls, Minnesota (for respondent
Hands of Hope)

Amy R. Lawler, Lee B. Nelson, Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and
Hudson, Judge.

UNPUBLISHED OPINION

MINGE, Judge

Relator employee challenges a decision by an unemployment law judge denying her unemployment benefits because she was discharged for misconduct. We affirm.

DECISION

After six months of employment, relator Tia Dvorak was discharged by respondent Hands of Hope Resource Center (HHRC) in Long Prairie. On July 8, 2009, an unemployment law judge (ULJ) determined that Dvorak was discharged for employment misconduct and ineligible for benefits under Minn. Stat. § 268.095, subd. 6 (2008).¹

Unemployment compensation benefits are intended for individuals who are unemployed through “no fault of their own.” Minn. Stat. § 268.03 (2008). An employee discharged for misconduct is ineligible to receive benefits. Minn. Stat. § 268.095, subd. 4(1) (2008). Provisions that disqualify benefits, such as the misconduct exclusion, are narrowly construed. *Prickett v. Circuit Science, Inc.*, 518 N.W.2d 602, 604 (Minn. 1994); *Hansen v. C.W. Mears*, 486 N.W.2d 776, 779 (Minn. App. 1992).

The court of appeals may reverse or modify a ULJ’s decision if the findings, inferences, conclusions, or decisions are affected by error of law or unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2008). “This court views the

¹ Although section 268.095, subdivision 6 was modified in 2009, the 2008 statute applies because the determination that Dvorak was discharged for employment misconduct occurred before August 2, 2009—the effective date of the 2009 modification. *See* 2009 Minn. Laws. ch. 15, § 9.

ULJ's factual findings in the light most favorable to the decision. This court also gives deference to the credibility determinations made by the ULJ. As a result, this court will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008) (citations omitted), *review denied* (Minn. Oct. 1, 2008). Whether an employee has committed misconduct is reviewed de novo as a mixed question of fact and law. *Frank v. Heartland Auto. Servs., Inc.*, 743 N.W.2d 626, 629 (Minn. App. 2008).

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; or (2) that displays clearly a substantial lack of concern for the employment." Minn. Stat. § 268.095, subd. 6(a). Misconduct does not include inadvertence, simple unsatisfactory conduct, a single incident that does not have a significant adverse impact on the employer, conduct an average reasonable employee would have engaged in under the circumstances, or good-faith errors in judgment. *Id.*

Dvorak worked as an abused-child coordinator at HHRC. Her duties included arranging for and providing social and emotional support to child-abuse victims. HHRC gave three reasons for her discharge: first, that Dvorak told a sheriff's department official that a sheriff's department investigator was "an arrogant prick," alienating the sheriff's department; second, that Dvorak responded to a question for a victim during a law-enforcement interview, alienating the local prosecutor's office; and third, that Dvorak fell

asleep during an interview with a client victim, seriously violating expected standards of behavior.

Dvorak admits to the “arrogant prick” comment but disputes its impact. The ULJ found severe damage caused by the incident. This finding is heavily fact-based. Dvorak’s supervisor testified that the sheriff’s department did not want to work with Dvorak because of this statement and Dvorak’s negative attitude towards law enforcement.² The ULJ found credible the supervisor’s testimony that HHRC has an integral relationship with the sheriff’s department and that this relationship was damaged by Dvorak’s comment. Based on these findings, we affirm the ULJ’s conclusion of misconduct on this ground.

Dvorak also admits that she answered a question during a formal law-enforcement interview with one of her clients. The ULJ found that the interruption severely impacted prosecution of the case and handicapped HHRC’s relationship with the prosecutor’s office. But a letter from the prosecutor submitted in the request for reconsideration undermines the findings. In the letter, the prosecutor relates that he told the HHRC supervisor that such an interruption could be damaging in a hypothetical prosecution, but that he did not say the prosecutor’s office did not want to work with Dvorak. Because the

² The supervisor’s testimony regarding the sheriff’s department’s willingness to work with relator was based almost entirely on hearsay, but the ULJ was entitled to rely on it so long as “it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs.” Minn. R. 3310.2922 (2008). Department of Employment and Economic Development promulgates its own evidentiary hearing rules, which do not have to “conform to common law or statutory rules of evidence and other technical rules of procedure.” Minn. Stat. § 268.105, subd. 1(b) (2008).

ULJ's adverse finding was based on a hearsay summary by the HHRC supervisor of the prosecutor's views, because the prosecutor did not indicate that the interruption adversely affected the handling of the case in which it occurred or relator's ability to work with the prosecutor's office, and because the supervisor admitted that the interruption was not deliberate, we conclude that this event does not support a finding of "misconduct."

Although Dvorak admits she fell asleep during another interview, she testified that it was caused by a medication that she was taking and that this created an uncontrollable circumstance. The ULJ agreed with Dvorak that this was not misconduct.

The "arrogant prick" comment is the only supported basis for the discharge. Because there is a reasonable basis to find this comment intentional or negligent, highly improper, and significantly adverse to the employer, we affirm the ULJ's conclusion that Dvorak was discharged for misconduct and is not entitled to unemployment benefits.

Affirmed.

Dated: