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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1797**

Jolene O'Donnell,  
Relator,

vs.

Hennepin Faculty Associates,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed July 20, 2010  
Affirmed  
Halbrooks, Judge**

Department of Employment and Economic Development  
File No. 22440525-3

Jolene M. O'Donnell, Ham Lake, Minnesota (pro se relator)

Hennepin Faculty Associates, Minneapolis, Minnesota (respondent)

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

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and  
Johnson, Judge.

## UNPUBLISHED OPINION

**HALBROOKS**, Judge

Relator challenges the unemployment-law judge's determination that she is ineligible for unemployment benefits because she was terminated for employment misconduct. We affirm.

### FACTS

Relator Jolene O'Donnell worked as a billing specialist for respondent Hennepin Faculty Associates (HFA) from April 2003 to April 2009. Her responsibilities included collecting money owed to HFA from various insurance companies. For a period of time leading up to relator's discharge, HFA was having difficulty obtaining reimbursement from Medica. Medica insured HFA patients and HFA employees. Because relator was frustrated by Medica's lack of response, she called the Minnesota Department of Commerce (DOC) to inquire about filing a complaint.

Relator had previously received an e-mail from patient-accounts manager Kathy Ferguson stating that "[a]nyone with an issue should be bringing it to their leads and if the leads don't resolve it in a timely manner then you bring it to the attention of your supervisor. If your supervisor doesn't resolve the issue then you bring it to me." After it was brought to relator's lead's attention that relator had directly contacted the DOC, her lead informed Ferguson. Ferguson terminated relator's employment for acting outside the scope of her authority as a billing specialist.

Relator applied for unemployment benefits through respondent Minnesota Department of Employment and Economic Development (DEED) and was deemed

ineligible because she had been discharged for employment misconduct. Relator appealed, and an evidentiary hearing was held before an unemployment-law judge (ULJ). The ULJ asked relator why she did not go up the chain of command before calling the DOC directly, to which relator responded, “I figured I would be proactive, get the information if they could help us, and then pass it along.” When asked about the incident, the vice president of human resources for HFA explained that relator was terminated in part because there were concerns that she might exceed the authority of her position in the future.

The ULJ determined that relator was discharged for employment misconduct and was therefore ineligible for unemployment benefits. The ULJ stated that “[a]n employer has a right to expect that an employee will not act beyond the scope of the employee’s duties,” and found that “O’Donnell did not have authority to make complaints to government agencies on behalf of HFA” and that she “exceeded her authority by calling the [DOC].” The ULJ further stated that “O’Donnell’s actions could have damaged the business relationship between HFA and Medica.”

Relator requested reconsideration of the ULJ’s decision, asserting two factual errors and her belief that she was protected under Minn. Stat. § 181.932 (2008) (the whistleblower statute). In an amended decision on September 25, 2009, the ULJ determined that the whistleblower statute did not apply because “[n]owhere in [relator’s] testimony d[id] O’Donnell say that her motivation in contacting the [DOC] was to report a violation of law” and that the factual errors alleged by relator had no bearing on the decision. This certiorari appeal follows.

## DECISION

This court may reverse or modify the ULJ's decision if, among other things, the decision is based on unlawful procedure, is unsupported by substantial evidence, or is arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2008). Whether an employee committed employment misconduct presents a mixed question of fact and law, *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006), but whether the employee committed a particular act is a question of fact, *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). Relator admits to operating outside of the chain of command. Accordingly, there is no factual question as to whether relator committed the act for which she was ultimately discharged. Whether the act relator committed constitutes employment misconduct presents a question of law, which we review de novo. *Scheunemann*, 562 N.W.2d at 34.

Employment misconduct is “any intentional, negligent, or indifferent conduct, on the job or off the job that (1) 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) (2008). An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. *Id.*, subd. 4(1) (2008). Refusing to abide by an employer's directives, policies, or procedures constitutes employment misconduct. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Relator does not argue on appeal that she was unaware of the policy or that her call to DOC did not violate the policy. Accordingly, relator's violation of the chain-of-

command policy fits within the definition of employment misconduct as either conduct that displays a serious violation of the standards her employer had the right to reasonably expect or conduct that displays a substantial lack of concern for her employment.

But the statutory definition of “misconduct” excludes “a single incident that does not have a significant adverse impact on the employer.” Minn. Stat. § 268.095, subd. 6(a).<sup>1</sup> Although relator was ultimately discharged for a single violation of the policy, the ULJ concluded that this violation caused concern that she might ignore this policy again. This type of concern is sufficient to show a significant adverse impact on the employer. *See Frank v. Heartland Auto. Servs., Inc.*, 743 N.W.2d 626, 630–31 (Minn. App. 2008) (holding that an employee’s single act of fraudulent billing had a significant adverse impact on his employer because it undermined the employer’s ability to assign essential tasks to the employee, and the employer could no longer “reasonably rely on the employee to manage the business’s financial transactions”). Because relator was discharged for employment misconduct and no exception applies, we affirm the ULJ’s conclusion that she is ineligible for unemployment benefits.

Relator also restates on appeal her belief that she is protected by the whistleblower statute. But relator never testified that she called DOC because of a concern that her

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<sup>1</sup> We note that this statutory section has been revised. *See* Minn. Stat. § 268.095, subd. 6(b) (Supp. 2009) (omitting this exception); *see also* Minn. Stat. § 268.095, subd. 6(d) (Supp. 2009) (“If the conduct for which the applicant was discharged involved only a single incident, that is an important fact that must be considered . . .”). But because relator’s eligibility determination was made prior to August 2, 2009, the amendments to the definition of employment misconduct are not applicable. *See* 2009 Minn. Laws ch. 15, § 9, at 48 (stating that amendments to this section are “effective for determinations issued on or after August 2, 2009”).

employer was violating a law. She stated that she was trying to be proactive, that she was frustrated with Medica's delays, and that she hoped the DOC could do something to assist HFA. She argues for the first time on appeal that she was actually calling DOC to see "if there was a violation of the Medicare rules governing payment of medical claims." There is no support in the record for that assertion. Accordingly, the whistleblower statute is not applicable to these facts.

**Affirmed.**