

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-45**

Abdikadir Yusuf,
Relator,

vs.

AB Car Rental Service, Inc.,
Respondent,

Department of Employment
and Economic Development,
Respondent.

**Filed August 22, 2011
Affirmed
Shumaker, Judge**

Department of Employment and Economic Development
File No. 26142064-3

Abdikadir Yusuf, Burnsville, Minnesota (pro se relator)

AB Car Rental Service, Inc., Peabody, Massachusetts (respondent)

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

Considered and decided by Wright, Presiding Judge; Shumaker, Judge; and
Larkin, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

Relator appeals from an unemployment-law judge's (ULJ) determination that he is ineligible for unemployment-compensation benefits because he was discharged for employment misconduct. We affirm.

FACTS

From May 26, 2010, until June 1, 2010, relator Abdikadir Yusuf worked as a service agent for AB Car Rental Service, Inc., where he cleaned rental cars after they were returned. On June 1, Yusuf drove a rental car into the service area and scraped the car's side mirror against the wall, causing \$519 in damage to the car. Yusuf did not report the damage. Upon discovering the damage later that day, the manager on duty, Mike Dyer, gathered the service agents and Yusuf together, and asked if they knew how the damage to the car had occurred. No one responded.

Later that day, another employee reported to Dyer that he had witnessed Yusuf damage the car. Dyer then watched a videotape of the day's events in the service area and observed Yusuf driving the car and later throwing a piece of the car's mirror into the garbage. Dyer questioned Yusuf about the incident in the presence of an interpreter, at Yusuf's request. Yusuf denied damaging the car, and denied even driving it. Yusuf was suspended pending further investigation into the accident. Dyer and other AB Car Rental managers then met with Yusuf a second time to further question him about the damage to the car. At this meeting, Yusuf that admitted he drove and damaged the car. The

managers then discharged Yusuf from employment, citing his dishonesty as the reason for his discharge.

Yusuf applied for unemployment-compensation benefits with the Minnesota Department of Employment and Economic Development (DEED). A DEED adjudicator initially deemed Yusuf ineligible for benefits. Yusuf appealed the determination and had a de novo evidentiary hearing before a ULJ. Yusuf admitted at the evidentiary hearing that he drove the car too close to the wall, damaged the car's mirror, and then threw the damaged portion of the mirror into the garbage. He testified that he then denied driving the car and damaging it when he first met with Dyer but that he admitted his conduct during the second meeting with Dyer and the other managers. Yusuf testified that he did not report the damage because he did not know the procedure for reporting damage to a vehicle and because he was afraid he would get in trouble.

After the evidentiary hearing, the ULJ concluded that Yusuf had committed employment misconduct and was thus ineligible for benefits. The determination resulted in an overpayment of unemployment benefits in the amount of \$3,969. Yusuf requested reconsideration, arguing that he was dismissed unfairly, that he never received training on how to report damage to a vehicle, and that if he had received such training, he would have reported the damage. The ULJ affirmed on reconsideration, and Yusuf's certiorari appeal followed.

DECISION

Standard of Review

This court may affirm the ULJ's decision or may remand, reverse, or modify the decision if the relator's substantial rights have been prejudiced because the findings, inferences, conclusion, or decision are

- (1) in violation of constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the department;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.

Minn. Stat. § 268.105, subd. 7(d) (2010).

Yusuf contends that his conduct was not employment misconduct. The ULJ disagreed, concluding that:

The evidence shows that Yusuf was discharged for lying about having anything to do with a damaged vehicle he serviced on June 1, 2010. [AB Car Rental's witnesses] testified that if Yusuf had admitted his actions and that he damaged the vehicle, he would not have been discharged because the damage was an accident. Yusuf admitted that he lied to Dyer about having the vehicle in his control, and about damaging the vehicle because he was scared he would get in trouble. The employer has a right to reasonably expect that an employee will tell the truth during an investigation into property damage, and will not lie about causing damage to company property. Yusuf's conduct was a serious violation of the employer's reasonable expectation, and also showed a substantial lack of concern for the employment.

“Whether an employee has engaged in conduct that disqualifies him from unemployment benefits is a mixed question of fact and law.” *Jenkins v. Am. Express Fin.*

Corp., 721 N.W.2d 286, 289 (Minn. 2006). Whether an employee committed the alleged act is a fact question. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). This court “will not disturb the ULJ’s factual findings when the evidence substantially sustains them.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But whether a particular act constitutes employment misconduct is a question of law, which we review de novo. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

The facts are not in dispute. Yusuf admitted that he drove the car too close to a wall, damaged the car’s side mirror, threw the damaged portion of the mirror into the garbage, failed to report his conduct or to admit it when questioned in a group, and then denied damaging the car when his manager questioned him about it. AB Car Rental later ascertained that the damage to the car was \$519. Because the facts are not in dispute, the question is whether Yusuf’s acts constituted employment misconduct.

Employment Misconduct

Unemployment-compensation benefits extend only to people unemployed through no fault of their own. Minn. Stat. § 268.03, subd. 1 (2010); *Auger v. Gillette Co.*, 303 N.W.2d 255, 257 (Minn. 1981). An employee who is discharged for employment misconduct is therefore ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). “Employment misconduct means any intentional, negligent, or indifferent conduct, on the job or off the job that displays clearly: (1) a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee; or (2) a substantial lack of concern for the employment.” *Id.*,

subd. 6(a) (2010). But employment misconduct does not include the applicant's "inefficiency or inadvertence; . . . simple unsatisfactory conduct; . . . conduct an average reasonable employee would have engaged in under the circumstances; . . . [or] good faith errors in judgment if judgment was required." *Id.*, subd. 6(b)(2)-(6) (2010). Further, a good-faith misunderstanding of the rules or policies of an employer does not constitute employment misconduct. *Tuckerman Optical Corp. v. Thoeny*, 407 N.W.2d 491, 493 (Minn. App. 1987).

"If the conduct for which the applicant was discharged involved only a single incident, that is an important fact that must be considered in deciding whether the conduct rises to the level of employment misconduct." Minn. Stat. § 268.095, subd. 6(d) (2010). AB Car Rental contends Yusuf's dishonesty in lying to Dyer about driving and damaging the car when Dyer questioned him through an interpreter constituted employment misconduct and was sufficient to result in employment termination. AB Car Rental's witnesses testified at the hearing that, had Yusuf been honest about damaging the car, he would not have been discharged.

"Even a single incident can be misconduct if it represents a sufficient enough disregard for the employer's expectations." *Blau v. Masters Rest. Assocs., Inc.*, 345 N.W.2d 791, 794 (Minn. App. 1984). "Dishonesty that is connected with employment may constitute misconduct." *Baron v. Lens Crafters, Inc.*, 514 N.W.2d 305, 307-08 (Minn. App. 1994) (holding that employee who falsely claimed to have trained store managers committed employment misconduct); *Frank v. Heartland Auto. Servs., Inc.*, 743 N.W.2d 626, 630-31 (Minn. App. 2008) (holding that even a single fraudulent act

can constitute employment misconduct because employer has right to rely on integrity of employees); *Skarhus*, 721 N.W.2d at 344 (upholding determination that relator committed misconduct based on relator's petty theft of less than \$4.00 worth of food, which showed that employer could no longer entrust her with responsibility for essential functions of her job as cashier).

“[An] employee's conduct must be considered in the context of her job responsibilities.” *Frank*, 743 N.W.2d at 630. Yusuf's responsibilities as a service agent were to clean and improve the appearance of vehicles. AB Car Rental had a reasonable expectation that its employees would report rental vehicle damage that they caused and would not lie about the damage. Withholding such information has the potential for a significant adverse impact to the company because damage reports are critical for insurance purposes and for determining whether damage should be charged to a customer. If an employee's dishonesty were to lead the company to believe that damage to a car was not the result of an employee's conduct, the company would likely assume that a customer damaged the car, requiring an investigation and possible allegations against the customer. An employee's dishonesty in this context could result in a spurious investigation, wasting the company's time, affecting its reputation, and possibly injuring customer relations, all of which are significant adverse impacts on the company. Every employer has the right to rely upon the integrity of its employees. *See id.* at 630-31. The ULJ correctly concluded that Yusuf's dishonesty in this context constituted employee misconduct.

Yusuf contends that he lied when questioned about the damage to the vehicle because (1) he did not have an interpreter during orientation who could explain to him the employer's expectations, policies, and procedures, and (2) he could not understand the interpreter provided to him during his first meeting with Dyer, where he denied driving and damaging the car.

Yusuf contends he did not have an interpreter during orientation to explain the company's rules and policies to him, and he thus did not understand that he should have told his manager about the damage to the car. But one of AB Car Rental's witnesses testified at the hearing that Yusuf was interviewed for the position in English, completed the application himself without the assistance of an interpreter, and went through orientation for the position in English without requesting the aid of an interpreter. Further, Yusuf did not complain of not being offered the services of an interpreter during orientation until he appealed his initial ineligibility determination, when he stated that he "was not provided with a Somali interpreter to explain the policies and procedures to [him]." One of AB Car Rental's witnesses testified that, had Yusuf requested an interpreter during orientation, AB Car Rental would have provided one.

Yusuf also contends that he could not understand the interpreter provided to him during the first meeting with Dyer, during which he denied driving and damaging the car. But Yusuf admitted at the evidentiary hearing that he never told the interpreter during the meeting that he could not understand him, and he also never indicated to AB Car Rental that he could not understand the interpreter.

Yusuf's two arguments center on the issue of credibility, which the ULJ assessed during the hearing. This court defers to the ULJ's credibility determinations. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). We defer to the ULJ's determination that witnesses from AB Car Rental provided more credible and persuasive testimony than did Yusuf. Further, the ULJ's determination is supported by substantial evidence in the record indicating that Yusuf never requested the services of an interpreter during orientation and never complained of inadequate interpreter translation services during his first meeting with Dyer, where he denied driving and damaging the vehicle in question.

Affirmed.