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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0269**

Anna Mae Skibinski,
Relator,

vs.

Township of Canosia,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed September 17, 2012
Affirmed
Schellhas, Judge**

Department of Employment and Economic Development
File No. 28644963-3

Anna Mae Skibinski, Proctor, Minnesota (pro se relator)

Michael E. Orman, Orman Nord & Hurd P.L.L.P., Duluth, Minnesota (for respondent
Township of Canosia)

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

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

Relator challenges an unemployment-law judge's (ULJ) decision that she is ineligible for unemployment benefits because she committed employment misconduct. We affirm.

FACTS

Relator Anna Skibinski worked for respondent Township of Canosia as a recycling-shed attendant from August 3, 2006, until the township terminated her employment on September 14, 2011. During Skibinski's initial employment, the township permitted her to accept recycling-shed customers' aluminum cans for her personal use and gain. But in April 2010, Western Lakes Superior Sanitary District, which funded the township's recycling, instructed the township that "recyclable material dropped off at the sites become the property of [the district] and may not be removed by any person or organization except [the district] nor its vendors." The township therefore informed Skibinski in a letter, dated May 4, 2011, and orally at a meeting on May 25, 2010, that she could no longer accept aluminum cans for her personal use. But Skibinski continued to accept aluminum cans from recycling-shed customers. The township terminated Skibinski's employment for violating several policies, but the immediate cause of her termination was her violation of the township's policy against removing recyclable materials.

Skibinski applied to respondent Minnesota Department of Employment and Economic Development (DEED) for unemployment benefits. DEED determined that she

was eligible for unemployment benefits, and the township appealed. A ULJ conducted an evidentiary hearing and decided that Skibinski is ineligible for unemployment benefits because she knowingly violated the township's removal-of-recyclable-materials policy. Skibinski requested reconsideration and the ULJ affirmed his decision.

Skibinski appeals by writ of certiorari.

D E C I S I O N

Upon review of a decision of a ULJ, this court may reverse or modify a decision if the substantial rights of the relator may have been prejudiced because the findings, inferences, or decision are, among other things, unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d)(5) (2010). "Substantial evidence is (1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Minn. Ctr. for Env'tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002). "Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law." *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted). "[W]hether a particular act constitutes disqualifying misconduct is a question of law that we review de novo." *Id.* "Whether the employee committed a particular act is a question of fact." *Brisson v. City of Hewitt*, 789 N.W.2d 694, 696 (Minn. App. 2010) (quotation omitted). Appellate courts review "the ULJ's factual findings in the light most favorable to the decision," *Stagg*, 796 N.W.2d at 315 (quotation omitted), and this court, in doing so, "giv[es] deference to the credibility

determinations made by the ULJ” and “will not disturb the ULJ’s factual findings when the evidence substantially sustains them,” *Rowan v. Dream It, Inc.*, 812 N.W.2d 879, 882 (Minn. App. 2012).

Skibinski argues that the ULJ erred by determining that she committed employment misconduct by violating her employer’s policy against removing recyclable material from the recycling center. We disagree.

An employee is ineligible for unemployment benefits if she is discharged for employment misconduct. Minn. Stat. § 268.095, subd. 4(1) (2010). Employment misconduct includes “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). “As a general rule, refusing to abide by an employer’s reasonable policies and requests amounts to disqualifying misconduct.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

In this case, the township informed Skibinski in its May 4, 2011 letter: “Collection of recyclable material is to remain on the property of the center. It is prohibited to collect any material for personal use. You have been warned of this a number of times.” The township’s policy was reasonable based on the ULJ’s finding that Skibinski’s conduct “endangered the grant with [the district],” which is substantially supported by the township treasurer’s testimony that the district funded the recycling shed with grant money, that he informed Skibinski that he was concerned that losing the district’s grant could jeopardize the recycling shed’s funding, and that he suspected that the district’s

April 2010 letter was a signal that one of the district’s vendors was not “getting aluminum cans.” Skibinski admitted at the evidentiary hearing that she accepted aluminum cans for her personal use despite the township’s policy:

I have taken cans from the day I first started working there.

....

Then the policy came out was you cannot accept cans from the customers anymore, and you must tell them that. So I did. . . . [But] the people chose, in fact one lady said, I’ll just put it in your van. And so from then on what the people wanted to leave for me, they left me Then the issue came up . . . that I had to tell the people they couldn’t give it to me. So I had to take out of my van and put it in recycling. I did not do that because I believed that that would be a violation of both the customer’s rights and my rights.

Skibinski later reaffirmed that “I did accept cans that people gave me personally.”

The ULJ found Skibinski to be “not credible” when she testified that she did not knowingly violate the policy, and the ULJ found that “[t]he more credible evidence shows that [Skibinski] was aware that she was violating policies by taking aluminum cans for her own personal use after May of 2010.” *See Rowan*, 812 N.W.2d at 882 (noting that this court “giv[es] deference to the credibility determinations made by the ULJ”).

Skibinski argues that she did not commit employment misconduct, emphasizing that she only accepted customers’ aluminum cans in her vehicle—her private property—on the parking lot adjacent to the recycling center—public property. Her argument is unpersuasive because employment misconduct includes conduct that is “off the job,” Minn. Stat. § 268.095, subd. 6(a), when that conduct violates an employer’s “reasonable

policies,” *Schmidgall*, 644 N.W.2d at 804. Skibinski also argues that the evidence insufficiently supports a conclusion that she violated two other township policies, but her argument is immaterial because the ULJ did not rely on the other alleged policies in determining that she committed employment misconduct. Skibinski also argues that the township failed to follow its progressive disciplinary policy, but under *Stagg*, her argument is meritless.

[W]hether an employer follows the procedures in its employee manual says nothing about whether the employee has violated the employer’s standards of behavior. Put another way, an employee’s expectation that the employer will follow its disciplinary procedures has no bearing on whether the employee’s conduct violated the standards the employer has a reasonable right to expect or whether any such violation is serious.

Stagg, 796 N.W.2d at 316. We conclude that the ULJ did not err by deciding that Skibinski committed employment misconduct and is therefore ineligible for unemployment benefits.

Affirmed.