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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A06-2274**

Richard L. Anderson,  
Relator,

vs.

Cabela's Retails, Inc.,  
Respondent,

Department of Employment  
and Economic Development,  
Respondent.

**Filed February 15, 2008  
Affirmed  
Hudson, Judge**

Department of Employment and Economic Development  
File No. 10197 06

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relator)

Cabela's Retails, Inc., c/o Johnson & Associates, P.O. Box 6007, Omaha, Nebraska  
68106 (respondent)

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1351 (for respondent Department)

Considered and decided by Randall, Presiding Judge; Kalitowski, Judge; and  
Hudson, Judge.

## UNPUBLISHED OPINION

**HUDSON**, Judge

Relator challenges the unemployment law judge's decision that he was disqualified from receiving unemployment benefits because he was discharged for misconduct for breach of loyalty after attempting to purchase guns from his employer through a third person for substantially less than their actual value. Because the unemployment law judge did not err by deciding that relator was discharged for unemployment misconduct, we affirm.

### FACTS

In August 2005, respondent Cabela's Retails, Inc. (Cabela's), hired relator Richard Anderson to work as a manager of its gun library in its Rogers, Minnesota, store. As part of his job duties, relator purchased guns for the gun library at Cabela's and priced them for resale. In June 2006, relator traveled to Mound, Minnesota, to purchase six guns from a private gun collector for the gun library.

After returning to Cabela's, relator discussed the gun purchase with his assistant, Daniel Wellman, and expressed his interest in purchasing two of the guns, a Colt Woodsman Sport and a Colt Woodsman Match Target. Relator had paid the collector \$200 for the Colt Woodsman Sport and \$400 for the Colt Woodsman Match Target.

Relator did not have a current Minnesota driver's license and therefore was unable to purchase the guns from Cabela's himself. According to Wellman, relator asked Wellman to buy the guns for him because Wellman had a federal firearms license and was able to legally purchase the guns. Wellman testified that relator had asked him to

purchase guns for him before, but that he had refused because he was “not comfortable” doing that. Wellman testified that on this occasion, he again told relator that he was not comfortable purchasing the guns for him. Wellman testified that relator “basically wasn’t seeking [his] approval,” but rather, just telling Wellman what he wanted to have happen. Wellman testified that relator asked him to “gift” him the gun. Wellman explained that relator intended to price the guns at 30 percent above what he had paid for them and stated: “I had reiterated to him that I . . . wasn’t 100 percent comfortable with it and he had . . . assured me he would price the guns 30 percent above to avoid any suspicion.”

Wellman notified the Cabela’s general manager about his suspicions regarding relator’s pricing of the guns. The general manager then had the guns appraised by three different appraisers.

Relator had priced the Colt Woodsman Sport at \$249.99. The three other appraisers consulted by Cabela’s priced the Colt Woodsman Sport at between \$550 and \$800, \$799.99, and \$900. Relator priced the Colt Woodsman Match Target at \$499.99. The other appraisers priced the Colt Woodsman Match Target at \$1,100, \$1,199.99, and \$1,850.

Relator priced the two guns he was interested in at a 20-percent markup, but priced the remaining four guns at a 58- to 86-percent markup. Relator classified the two Colt guns as “non-library,” meaning they were not antique or high-quality enough to be “library” guns because he believed they “did not fit the criteria of being a gun library gun. They had no . . . real historical value. They’re not real rare. They’re not a custom gun.” Wellman testified that he believed the guns were library quality. The Cabela’s

general manager testified that he believed relator priced the guns “under what they would sell for market value, with the intent of purchasing them for his own personal use.” Cabela’s terminated relator’s employment on June 29, 2006.

Relator established a benefit account with the Minnesota Department of Employment and Economic Development on July 2, 2006. The department adjudicator determined that relator was not discharged for employment misconduct and that he was not disqualified from receiving unemployment benefits. Cabela’s appealed the adjudicator’s decision on July 26, 2006, and requested a hearing before an unemployment law judge (ULJ).

On August 31, 2006, a telephone-conference hearing was held before the ULJ. Relator, the Cabela’s general manager, the Cabela’s human-resources manager, and the Cabela’s current gun-library manager participated in the hearing. At the hearing, relator admitted that he asked Wellman to use his federal firearms license to purchase the guns and stated that “[i]n hindsight, you know, I was wrong. I made an honest mistake. I misjudged the value of the guns.” But relator maintained that he did not try to cheat anyone. During the hearing, relator stated that “[a] dishonest person would have bought the guns directly from the seller . . . and the store would have been none the wiser.” Relator also testified that he believed Wellman “saw this as an opportunity to advance his position within the store.”

On September 7, 2006, the ULJ issued his decision. He found that relator “knew based on his knowledge of firearms that these guns were priced by him at substantially less than their actual value” and concluded that “[a] preponderance of the evidence does

support a finding that [relator] did breach his duty of loyalty and trust owed Cabela's" and that "[i]n attempting to repurchase these guns using his subordinate, [relator] was clearly intending to benefit himself at the expense of Cabela's." The ULJ concluded that relator's actions were a "serious violation" of the standards Cabela's had a right to reasonably expect and that they constituted employment misconduct. The ULJ decided that relator was disqualified from receiving unemployment benefits because he was discharged for employment misconduct. On September 20, 2006, relator requested reconsideration of the ULJ decision. On November 6, 2006, the ULJ issued an order affirming his previous decision. This certiorari appeal follows.

### **D E C I S I O N**

Relator argues that the unemployment law judge (ULJ) erred by concluding that he was discharged from his employment at Cabela's for employment misconduct. Relator argues that (a) his honest mistake in misjudging the value of the guns did not demonstrate disloyalty; (b) his former employer did not suffer economic loss as a result of this incident; (c) the information about the other appraisals was unreadable; and (d) discharge was too severe of a consequence.

This court may reverse or modify the ULJ's findings or inferences if they are "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 268.105, subd. 7(d)(5) (2006); *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court reviews the ULJ's factual findings "in the light most favorable to the decision." *Skarhus*, 721 N.W.2d at 344.

When an employee is discharged for employment misconduct, he or she is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2006). Whether an employee committed employment misconduct is a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether an employee engaged in an act or pattern of conduct that allegedly constitutes employment misconduct is a factual question, but whether the act constitutes employment misconduct is a question of law reviewed de novo. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997).

Here, the ULJ determined that relator's appraisal of the two guns was a breach of loyalty done with the intent to benefit himself at the expense of Cabela's. Relator admits that the pricing of the guns was a mistake, but he argues that the mistake was made in good faith. The record supports the ULJ's conclusions.

Relator had worked as the gun-library manager for Cabela's for almost a year before this incident and considered himself a "gun enthusiast." Relator purchased six guns from the private collector for Cabela's. He priced four of the guns at at least a 58-percent markup, but he priced the two guns he was interested in purchasing at only a 20-percent markup. Additionally, three other appraisers consistently valued the two guns relator was interested in purchasing at well above relator's own valuation. Based on relator's experience and knowledge of guns, we conclude that the ULJ did not err by finding that relator intentionally under-priced the guns to his own advantage and to the disadvantage of his employer. Next we determine whether relator's actions constituted employment misconduct.

Minnesota law defines “[e]mployment misconduct” as:

[A]ny 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) (2006). But “a single incident that does not have a significant adverse impact on the employer” and “good faith errors in judgment if judgment was required” do not constitute employment misconduct. *Id.* Employees owe their employers a duty of loyalty, which prohibits employees “from soliciting the employer’s customers for [themselves], or from otherwise competing with [their] employer, while [they are] employed.” *Rehab. Specialists, Inc. v. Koering*, 404 N.W.2d 301, 304 (Minn. App. 1987).

Relator put his own interests before those of Cabela’s when he used his position as gun-library manager to under-value items he was interested in purchasing. Although Cabela’s apparently did not suffer any economic loss as a result of relator’s actions, the incident clearly had a significant adverse effect on Cabela’s because it affected its ability to trust relator to do his job honestly and raised serious questions about his loyalty. *See, e.g., Skarhus*, 721 N.W.2d at 344 (concluding that employee’s theft was a single act that had a significant adverse impact on the employer because employee was a cashier and because of the theft the employer “could no longer entrust [the employee] with those responsibilities” and the employer’s “ability to assign the essential functions of the job to its employee was undermined by the employee’s conduct”); *Schmidgall*, 644 N.W.2d at 806 (stating that “[a] single incident can constitute misconduct when an employee

deliberately chooses a course of conduct that is adverse to the employer”). We conclude that the ULJ did not err when he concluded that relator’s actions constituted employment misconduct.

Relator questions the ULJ’s reliance on a document submitted as evidence that was difficult to read. In his brief, relator states that “all three appraisals given . . . were of such poor quality that neither [the ULJ] nor I could . . . read the appraisals.” A review of the record shows that a document submitted by Cabela’s summarizing the appraisals is very difficult to read because the copy is of very poor quality, but the relevant information in that document is reproduced in three other appraisal documents in the record that are quite legible. Additionally, both the general manager and the current gun-library manager at Cabela’s testified about the information contained in the documents. Finally, relator did not question the validity of the documents during the ULJ’s hearing.

Finally, relator argues that discharge was too severe a consequence for his actions, and that “this mistake could easily have been rectified through a re-evaluation of the guns and possible reprimand by my supervisor.” We take no position on relator’s argument because “[w]e are not concerned with whether or not the employee should have been discharged but only with the employee’s [qualification] for benefits after termination of employment.” *Brown v. Nat’l Am. Univ.*, 686 N.W.2d 329, 332 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004).

**Affirmed.**