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*Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A11-839**

Michael A. Hamilton,
Relator,

vs.

Satellite Industries, Inc.,
Respondent,

Department of Employment and
Economic Development,
Respondent.

**Filed January 30, 2012**
**Affirmed**
**Crippen, Judge***

Department of Employment and Economic Development
File No. 26753668-3

Michael A. Hamilton, Brooklyn Park, Minnesota (pro se relator)

Satellite Industries, Inc., Plymouth, Minnesota (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 Ross, Presiding Judge; Minge, Judge; and Crippen, Judge.

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* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## U N P U B L I S H E D  O P I N I O N

**CRIPPEN**, Judge

Relator challenges an unemployment-law judge's determination that he is ineligible to receive unemployment-compensation benefits because he was discharged for employment misconduct. We affirm.

## FACTS

Respondent Satellite Industries, Inc. employed relator Michael Hamilton as a material manager from 2005 through November 2010. Relator supervised Scott Fovbe and was responsible for approving business-related expenses that Fovbe charged on the company credit card.

In November 2010, relator's manager reviewed relator's and Fovbe's expense reports. He identified approximately 60 expense items in Fovbe's expense reports from December 2009 through October 2010 that were not business related. When the manager spoke with relator about his approval of the nonbusiness-related expenses, relator did not provide an explanation for approving the expenses. It is not disputed for purposes of the issues before us that relator subsequently was discharged.

Relator applied for unemployment benefits with respondent Minnesota Department of Employment and Economic Development (DEED) and was initially deemed eligible to receive benefits. Respondent appealed the determination, and an unemployment-law judge (ULJ) held an evidentiary hearing.

At the hearing, Dale Van Vreede, respondent's vice president of human resources, described relator's approval of Fovbe expense reports that showed nonbusiness-related

items. He provided some examples of approved nonbusiness expenditures, the dates they were incurred, their amounts, and how the company determined that they were not business related. He explained that relator was responsible for reviewing Fovbe's expense reports to ensure each expense was business related and that there was a correlating receipt and notation explaining the purpose of the expense and the business reason for it. Relator was to note any nonbusiness-related expenses so that Fovbe could reimburse the company.

Relator confirmed that he approved Fovbe's expense reports that included nonbusiness items. He stated that he did not review the expenses carefully, extensively, or thoroughly, but that he checked only to see that Fovbe provided a receipt and an explanation for each expense. When asked why he approved expenses incurred on dates when Fovbe was not traveling for business, relator said, "I can't explain why Mr. Fovbe did what he did. I can't explain his action and I take full responsibility for that." Relator said he had "no excuse" for what he did and observed that he just scanned the claims and that he did not look at them line by line or look at each receipt.

Both after the hearing and later, upon reconsideration, the ULJ determined that relator was discharged for conduct that amounted to employment misconduct and was ineligible to receive unemployment-compensation benefits.

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

When reviewing the decision of a ULJ, this court may affirm the decision, remand for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced. Minn. Stat. § 268.105, subd. 7(d) (2010).

An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2010). Employment misconduct may be "intentional, negligent, or indifferent" and must constitute either a "serious violation of the standards of behavior the employer has the right to reasonably expect" or a substantial lack of concern for the employment. *Id.*, subd. 6(a) (2010).

Whether an employee committed a particular act is a question of fact and we will not disturb a ULJ's factual findings if the evidence substantially sustains them. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Determining whether an act constitutes employment misconduct is a question of law, which this court reviews de novo. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011).

The record substantially supports the ULJ's findings that from "December 10, 2009, through October 20, 2010, Fovbe charged 60 meals on the company credit card which were not business related," and that relator "did not carefully review the meal expenditures charged by Fovbe on the company credit card and approved the non-business related meal expenditures." As a manager, relator was responsible for approving or denying expenses that Fovbe charged on the company credit card. Relator's testimony confirmed that he repeatedly and negligently approved Fovbe's nonbusiness-related expenditures because he failed to carefully or thoroughly review each of the charges on the company credit card.

In determining an employer's standards of behavior, we commonly look to the employer's rules or policies. *Montgomery v. F&M Marquette Nat'l Bank*, 384 N.W.2d 602, 604 (Minn. App. 1986), *review denied* (Minn. June 13, 1986). But an employer also

has the right to expect "scrupulous adherence" to procedures for handling employer funds to ensure that the funds are not misplaced or stolen. *McDonald v. PDQ*, 341 N.W.2d 892, 893 (Minn. App. 1984). This court has held that a lack of such adherence constitutes misconduct. *Id.*

The ULJ determined that respondent, "by repeatedly negligently" failing to carefully review Fovbe's charges and approving nonbusiness-expense charges "clearly displayed a serious violation of the standards of behavior [respondent] had a right to reasonably expect of him." The record amply supports this determination. Additionally, because relator approved numerous nonbusiness expenditures on multiple expense reports over a nine-month period, the record demonstrates a pattern of failing to carefully and thoroughly review Fovbe's expenses. *See Gilkeson v. Indus. Parts & Serv., Inc.*, 383 N.W.2d 448, 452 (Minn. App. 1986) (holding that employee's "pattern of failing to follow policies and procedures and ignoring directions and requests" constituted misconduct). The ULJ correctly determined that relator was discharged for misconduct and is ineligible to receive unemployment-compensation benefits.

Relator disputes the prominence of respondent's travel-expense policy and claims that he had leeway on the topic under prevailing company business practices. But the ULJ attributed relator's misconduct to rightful expectations of the employer, not to the governing policy. And relator does not dispute that it was his duty to supervise Fovbe and approve Fovbe's travel expenses, and that he was negligent in this role.

Relator also argues that Van Vreede should have produced the expense reports to support his testimony. But relator does not challenge any of the ULJ's findings that are

supported by Van Vreede's testimony, and he does not dispute Van Vreede's testimony that was based on the contents of the reports. Relator generally disputes the credibility of Van Vreede's testimony, but credibility determinations "are the exclusive province of the ULJ and will not be disturbed on appeal." *Skarhus*, 721 N.W.2d at 345.

Relator asserts that respondent discharged him without proper process, but the issue before us regards relator's eligibility for unemployment benefits, not whether respondent was justified in terminating relator's employment. *See Stagg*, 796 N.W.2d at 316 (stating that in considering whether conduct constitutes misconduct, "the focus of the inquiry is the employee's conduct, not that of the employer").

Relator observes the absence of evidence that his conduct was intentional, but his negligent conduct is sufficient to satisfy the statutory definition of employment misconduct. *See* Minn. Stat. § 268.095, subd. 6(a) (stating that employment misconduct includes "intentional, negligent, or indifferent conduct").

Finally, relator argues that his conduct did not rise to the level of employment misconduct because respondent did not dismiss Fovbe for his actions in using the company credit card to pay for nonbusiness expenditures. But the treatment of another employee is not relevant to a misconduct determination. *See Sivertson v. Sims Sec., Inc.*, 390 N.W.2d 868, 871 (Minn. App. 1986), *review denied* (Minn. Aug. 20, 1986).

**Affirmed.**