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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A06-2367**

Cy Edmonta B. Wilson,  
Relator,

vs.

Ikea Burbank,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed January 22, 2008  
Affirmed  
Toussaint, Chief Judge**

Department of Employment and Economic Development  
File No. 12718 06

Cy Edmonta B. Wilson, 215 Douglas Drive, Waverly, MN 55390 (pro se relator)

Ikea Burbank, 600 North Fernando Boulevard, Burbank, CA 91502 (respondent)

Lee B. Nelson, Department of Employment and Economic Development, E200 First National Bank Building, 332 Minnesota Street, St. Paul, MN 55101-1351 (for respondent Department)

Considered and decided by Toussaint, Chief Judge; Lansing, Judge; and Huspeni, Judge.\*

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

## **UNPUBLISHED OPINION**

**TOUSSAINT**, Chief Judge

By writ of certiorari, relator, Cy Edmonta B. Wilson, challenges the decision of the unemployment law judge (ULJ) disqualifying her from receiving unemployment benefits due to employment misconduct. Because we conclude that the record reasonably supports the ULJ's final decision and relator's conduct constituted employment misconduct, we affirm.

### **DECISION**

Relator began working at IKEA Twin Cities on July 1, 2004, and later transferred to the Burbank, California store, starting on November 21, 2005. Relator was aware of IKEA's handbook policy which stated that "unacceptable performance, unexcused attendance and/or tardiness; excessive unexcused absenteeism and/or tardiness; unreported absence (no call, no show)" were grounds for termination.

Between December 1, 2005 and August 8, 2006, relator: (1) called in sick or left early ten times, usually on Mondays or Fridays; (2) was late 50 times; (3) punched in early without authorization eight times; (4) incurred unauthorized overtime 15 times; (5) worked less than 8 hours on 12 days; (6) took overly long lunch breaks six times; and (7) missed punching in or out eight times.

Until the time she was terminated, relator was continually warned, orally and in writing, that her actions were in violation of company policy. Relator continued to arrive late to work even after her starting time was adjusted. Relator continued to incur unauthorized overtime even after she was repeatedly warned that she was not allowed to

do so without first getting approval. Relator repeatedly forgot to punch in or out, even after being warned numerous times about IKEA's missing-punch policy.

On August 8, 2006, relator was terminated, and she subsequently applied for unemployment benefits. The Minnesota Department of Employment and Economic Development (DEED) notified relator that she was disqualified from receiving unemployment benefits, and relator requested a telephone hearing. After the telephone hearing, the ULJ issued her decision that relator was disqualified from receiving unemployment benefits because she had been terminated for employment misconduct. Relator filed a request for reconsideration, and the ULJ affirmed her earlier decision.

This court may affirm the decision of the ULJ or remand for further proceedings; or it may reverse or modify the decision if the substantial rights of relator 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) (2006).

Whether an employee engaged in an act or pattern of conduct that 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). This court reviews factual findings in the light most favorable to the decision and will not disturb them as long as there is evidence that reasonably tends to sustain those findings. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d

801, 804 (Minn. 2002).

When an employer discharges an employee for “employment misconduct,” the employee is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 4 (2006). Employment misconduct is

any 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). This definition of employment misconduct is exclusive and no other definition shall apply. Minn. Stat. § 268.095, subd. 6(e) (2006).

Employers have the right to expect their employees to work when they are scheduled. *Little v. Larson Bus Serv.*, 352 N.W.2d 813, 815 (Minn. App. 1984). “Absence from work under circumstances within the control of the employee . . . has been determined to be misconduct sufficient to deny benefits.” *Jenkins v. American Exp. Financial Corp.*, 721 N.W.2d 286, 290 (Minn. 2006); *see also Prickett v. Circuit Sci., Inc.*, 518 N.W.2d 602, 605 (Minn. 1994); *Jones v. Rosemount, Inc.*, 361 N.W.2d 118, 120 (Minn. App. 1985). Even if absenteeism is not willful or deliberate, it demonstrates a lack of concern for that employee’s job if chronic and excessive. *Id.* Tardiness, combined with several warnings, evidences disregard by an employee of his or her employer’s interest and is in violation of standards of behavior that the employer has a right to expect of its employees. *Evenson v. Omnetic’s*, 344 N.W.2d 881, 883 (Minn. App. 1984) (where relator’s continued tardiness, excessive absenteeism, leaving work early, and taking long lunches constituted misconduct).

Relator does not dispute her multiple absences, excessive tardiness, missing punches, and unauthorized overtime. She also does not dispute that she was given multiple warnings. Relator disputes the ULJ's legal determination that her conduct constituted employment misconduct, alleging that she was not terminated for the above conduct, but only because her supervisor did not like her and was determined to fire her.

Relator's continuing pattern of absenteeism, tardiness, unauthorized overtime, and time-clock infractions constitutes employment misconduct. Relator's misconduct was substantial and demonstrated an intentional, serious disregard for her employer's interests. Relator failed to correct her misconduct after being repeatedly warned. The ULJ did not err in determining that relator engaged in employment misconduct under Minn. Stat. § 268.095, subd. 6(a), and that she is disqualified from receiving unemployment benefits.

**Affirmed.**