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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0127**

Pamela J. Shackelford,
Relator,

vs.

Contingent Work Force Solutions LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed February 12, 2008
Affirmed
Muehlberg, Judge***

Department of Employment and Economic Development
File No. 6282 06

Pamela J. Shackelford, 1760 160th Street West, Faribault, MN 55021-7648 (pro se relator)

Contingent Work Force Solutions LLC, 525 Park Street, Suite 485, St. Paul, MN 55103 (respondent)

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

Considered and decided by Toussaint, Chief Judge; Crippen, Judge;^{**} and Muehlberg, Judge.

UNPUBLISHED OPINION

MUEHLBERG, Judge

Relator challenges the decision by the unemployment law judge (ULJ) that she was disqualified from receiving unemployment benefits because she had been discharged for misconduct for falsifying her time sheets, arguing that she acted pursuant to her supervisor's directions and contending that the ULJ was unfair. We affirm.

FACTS

Relator was employed by respondent Contingent Work Force Solutions, LLC (CWF), to work as a cook supervisor at the Faribault Correctional Facility from July 1, 2005, until April 4, 2006, when she was discharged for falsifying her time sheets. She established an unemployment-benefits account with respondent Department of Employment and Economic Development (DEED). A department adjudicator ruled that she was disqualified from receiving benefits because she had been discharged for misconduct, and relator appealed. After an initial hearing and decision finding misconduct, the ULJ granted relator's request for reconsideration, held an additional hearing, and issued a decision finding no misconduct. The ULJ then granted the employer's request for reconsideration, held another hearing, and then issued a decision finding misconduct. Relator filed a second request for reconsideration, and the ULJ

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denied the request and affirmed the third decision finding misconduct. Relator seeks certiorari review of this last order.

Relator generally worked a ten-hour shift from 4:00 a.m. to 2:00 p.m., four days on and four days off. The employer had policies that required employees to fill out their actual time on their time sheets, with strict warnings that falsification could result in discipline up to and including immediate discharge. The policy was contained in the employee handbook, which also required that all overtime be preapproved by the supervisor, and it was reiterated on the time sheet itself. Relator testified that she was aware of this policy. In addition, employees were required to carry a radio with them at work, sign the radio out when they arrived at work, and sign it back in when they left work, so that a record of their arrivals and departures also existed on the radio logs.

Relator's supervisor suspected that relator was leaving work before the end of her shift. The employer investigated by comparing relator's time entries on her time sheets with her entries on the radio log. On five days in February and March 2006, the entries on her time sheets and the radio log were consistent in showing that she started work at 4:00 a.m., but there were discrepancies as to the times that she departed from work. While she recorded on her time sheets that she left work at 2:00 p.m. or later, she recorded on the radio log that she returned her radio from two to five-and-one-half hours earlier. The employer concluded that relator had falsified her time sheets on those dates and discharged her for that reason.

Relator and another employee testified that their supervisor had told them that if they worked on an overtime day, she would pay them for the entire ten-hour shift, even if

they did not work ten hours. They explained that this only applied to days that were not regularly scheduled work days and that would be considered overtime because they had already completed their work week of four ten-hour days. Relator argues that the five days that she left early were overtime days for which she had permission to leave early pursuant to her discussion with her supervisor.

The ULJ found that overtime is generally defined as working more than 40 hours in a work week. She concluded that in late January, relator's supervisor had told relator that she could report a full shift on her time sheet, even though she had worked only five to six hours on that particular shift. The ULJ also found that relator "mistakenly understood [her supervisor's] directive to mean that she could report that she had worked an entire shift even if she had not on those occasions that she worked overtime." But the ULJ went on to determine that the time sheets failed to substantiate that relator worked overtime on the five days at issue, and instead showed that she failed to report her actual hours at work on those dates, which displayed clearly a serious violation of the standards of behavior the employer had a right to reasonably expect of its employees. Consequently, the ULJ determined that relator was disqualified from receiving unemployment benefits because she had been discharged for misconduct.

D E C I S I O N

The court of appeals may reverse or modify the ULJ's decision if the substantial rights of the relator may have been prejudiced because the findings, inferences, conclusion, or decision are affected by error of law or unsupported by substantial evidence in view of the entire record as submitted. Minn. Stat. § 268.105, subd. 7(d)(4),

(5) (2006). Substantial evidence means “(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 Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

The determination of whether an employee engaged in disqualifying misconduct is a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether the employee committed particular acts that are alleged to be misconduct is a question of fact. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). In reviewing findings of fact, this court will defer to the ULJ’s credibility determinations, viewed in the light most favorable to the findings. *Id.* The determination of whether the employee is disqualified from receiving unemployment benefits is a question of law that the appellate court will review de novo. *Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 523 (Minn. 1989).

An employee discharged for misconduct is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (Supp. 2005). Employment misconduct is “any intentional, negligent, or indifferent conduct . . . (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.” *Id.*, subd. 6(a) (2004). Failure to follow the proper procedure for filling out a time card can constitute misconduct. *McKee v. Cub Foods*,

Inc., 380 N.W.2d 233, 236 (Minn. App. 1986); *Ruzynski v. Cub Foods, Inc.*, 378 N.W.2d 660, 662 (Minn. App. 1985).

Relator admits that she falsified her time sheets, contrary to company policy, on the dates in question, but she asserts that she had worked overtime on those days and thus filled out her time sheet pursuant to her supervisor's earlier statement to her and her coworker that they would be paid for the entire overtime shift even if they left early. The ULJ credited relator's testimony on this point, finding that relator's supervisor had told relator that she could report on her time sheet that she had worked a full overtime shift on one particular day in January, even though she had worked only five to six hours, and that relator had mistakenly misunderstood this "to mean that she could report that she had worked an entire shift even if she had not on those occasions that she worked overtime."

Relator seems to argue that she did not commit misconduct because she left early with her supervisor's permission on the days she was working overtime. The ULJ, however, found that "the time sheets do not substantiate that [relator] was working overtime" on the five dates at issue. The ULJ also found that relator failed to report her actual hours worked on those dates. We therefore address whether the ULJ's findings are supported by substantial evidence.

The ULJ found that overtime is generally defined as working more than 40 hours in a work week. We have reviewed the time sheets in great detail, using this definition. They show that on the dates in question, relator did not work overtime. In addition, a comparison of the radio log and relator's time sheets for the dates in question shows that relator signed out on the radio log well before the time she indicated on her time sheets

that she left work. Consequently, the ULJ's findings are supported by substantial evidence.

Relator attempts to cast suspicion on her supervisor's motives by arguing that her supervisor reported relator's misconduct because her supervisor was trying to justify paying two employees for the same overtime. The ULJ did not make this inference and this court cannot do so.

Relator also challenges the ULJ's finding that relator did not follow the employer's overtime policy. Relator asserts that this policy did not exist, and she contends that she was merely following the instructions of her direct supervisor. But even though the ULJ found that relator misunderstood the overtime policy, the decision that she committed disqualifying misconduct was based on the finding that she did not work overtime on the dates at issue. Therefore, whether or not she followed the overtime policy is not relevant to the ultimate ruling as to misconduct.

In conclusion, the ULJ's findings are supported by substantial evidence, and the finding that relator committed disqualifying misconduct is amply supported by the record.

II.

Relator also argues that the ULJ was unfair. The ULJ is responsible for ensuring "that all relevant facts are clearly and fully developed." Minn. Stat. § 268.105, subd. 1(b) (Supp. 2005). The ULJ must exercise control over the hearing procedure to protect "the parties' rights to a fair hearing." Minn. R. 3310.2921 (2005). The ULJ may receive "competent, relevant, and material evidence" but may exclude evidence that is

“irrelevant, immaterial, unreliable, or unduly repetitious.” *Id.* 3310.2922 (2005). To establish that a reversal is warranted on this basis, the relator must show that her substantial rights were prejudiced by unlawful procedure or other error of law. Minn. Stat. § 268.105, subd. 7(d)(3), (4) (2006).

Relator argues that the ULJ did not allow her to question her coworker about the hours that she worked because the ULJ ruled that it was not relevant. She contends that she was trying to show common practice. The issue here is whether relator committed misconduct, not whether the coworker did, and the ULJ properly ruled that testimony as to the hours that her coworker worked was irrelevant. Relator also argues that she was “shut down” when she or her coworker tried to clarify that the coworker was not her boss. This, too, was not relevant to the issue of whether relator committed disqualifying misconduct. Relator has not demonstrated that the ULJ conducted the hearing in an unfair manner or that her substantial rights were prejudiced.

Affirmed.