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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0827**

Janet L. Leach,
Relator,

vs.

Craftmatic of Ten Thousand Lakes Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 13, 2008
Affirmed
Wright, Judge**

Minnesota Department of Employment and Economic Development
File No. 1079 07

Janet L. Leach, 9008 Russell Avenue South, Bloomington, MN 55431 (pro se relator)

Craftmatic of Ten Thousand Lakes Inc., 315 Marie Avenue East, St. Paul, MN 55118
(respondent)

Lee B. Nelson, Katrina I. Gulstad, Minnesota Department of Employment and Economic
Development, E200 1st National Bank Building, 332 Minnesota Street, St. Paul, MN
55101 (for respondent department)

Considered and decided by Stoneburner, Presiding Judge; Peterson, Judge; and
Wright, Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

Relator challenges the decision of the unemployment law judge (ULJ) that she committed employment misconduct and, therefore, is disqualified from receiving unemployment benefits. Relator argues that the ULJ's finding that relator, a telemarketer, improperly removed telephone numbers from her employer's computer system is unsupported by the record. We affirm.

FACTS

Craftmatic of Ten Thousand Lakes, Inc. (Craftmatic) hired relator Janet Leach in March 2005 to work as a telemarketer. In that capacity, Leach spoke to potential customers selected through an automatic-dialing system and attempted to make appointments for sales representatives to visit customers' homes. She was given a script to follow, which included responses to help her convince the customer to set an appointment.

After each telephone call, Leach was required to enter into the computer a code for the telephone number that indicated what happened during the telephone call. If a customer asked to be removed from the call list or if the telephone number had been disconnected, Leach was required to code the telephone number as "no good." This code caused the telephone number to be taken out of the system and never called again. Craftmatic's computer system tracks each telemarketer's activity, creating a daily call log that includes the telemarketer's user identification number; the date, time, and duration of

each telephone call; the code entered for each telephone call; any remarks associated with the coding; and the name of each individual called.

In October 2006, Leach received a warning for coding too many telephone calls as “no good.” After reviewing Leach’s call log for December 5, 2006, Craftmatic concluded, based on the duration of Leach’s telephone calls, that she had falsely coded numerous telephone numbers as “no good.” Craftmatic discharged Leach on December 7, 2006.

Leach applied for unemployment benefits, and a Minnesota Department of Employment and Economic Development adjudicator determined that Leach had coded the telephone numbers as “no good” without justification. As such, Leach had been discharged for employment misconduct and, therefore, is disqualified from receiving unemployment benefits. Leach appealed, and a ULJ conducted a de novo evidentiary hearing by telephone. Leach was present for the hearing, and Amanda Dardis, Craftmatic’s director of human resources, participated on behalf of Craftmatic.

Dardis explained Craftmatic’s calling system and testified that she had participated in the decision to discharge Leach. Dardis explained that Leach had taken virtually all of the telephone numbers that she had called on December 5 out of Craftmatic’s lead base by coding them “no good.” And because Leach’s telephone calls averaged one second or less, Dardis testified, Leach had done so without speaking to the customers.

Leach initially maintained that she had been discharged on December 4 and had not worked on December 5. But Leach acknowledged that the user-identification number on the call log was hers. Eventually she agreed that she worked on December 5. Leach

also denied being on the telephone for less than one second for the majority of her December 5 telephone calls, but she admitted that her telephone calls lasted only “a couple” seconds and that she coded a majority of her telephone calls for that day as “no good.”

The ULJ concluded that Leach had committed employment misconduct and, therefore, is disqualified from receiving unemployment benefits. Following Leach’s request for reconsideration, the ULJ affirmed the original decision. This certiorari appeal followed.

D E C I S I O N

Leach challenges the ULJ’s decision that she committed employment misconduct, arguing that “[t]he charge that [she] took numbers out of the system is false.” As such, Leach appears to challenge the ULJ’s factual finding that she took numbers out of the system without good cause.

When reviewing the decision of a ULJ, we may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the 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 employment misconduct presents a mixed question of law and fact. *Schmidgall v. Filmtec Corp.*, 644 N.W.2d 801, 804 (Minn.

2002). Whether an employee committed a particular act is a question of fact. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). A ULJ's factual findings are reviewed in the light most favorable to the decision, *id.*, and will not be disturbed on appeal if there is evidence that reasonably tends to sustain those findings, *Schmidgall*, 644 N.W.2d at 804. But whether a particular act constitutes employment misconduct is a question of law, which we review de novo. *Schmidgall*, 644 N.W.2d at 804. An employee who is discharged for employment misconduct is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (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.” *Id.*, subd. 6(a) (2006). An employer has the right to expect that its employees will obey reasonable requests. *Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 206 (Minn. App. 2004), *review denied* (Minn. Mar. 30, 2004). An employee's intentional conduct that is contrary to an employer's reasonable policies and requests constitutes employment misconduct. *Schmidgall*, 644 N.W.2d at 804.

The ULJ found that Leach “was on the telephone one second or less on a majority of the approximately 407 to 420 calls she received through the telephone system routing potential customers on December 5, 2006,” and that Leach intentionally miscoded the calls as “no good.” The ULJ concluded that this action constitutes employment misconduct because it displayed serious disregard for Craftmatic's interests and the standards of behavior that Craftmatic had a right to expect of Leach as an employee.

Leach argues that the ULJ's finding that she took the numbers out of the system is unsupported by the record. But she admitted to coding the vast majority of her telephone calls as "no good" on December 5 and does not argue that she did so accidentally or mistakenly. Because the record establishes that coding numbers as "no good" removed them from Craftmatic's lead base, Leach's argument is without merit.

Furthermore, there is substantial evidence to support the ULJ's finding that Leach had no justification for removing the telephone numbers from the system. Dardis testified that most of Leach's telephone calls were "one second or averaging one second." And Leach's call log for December 5 is consistent with a finding that the majority of Leach's telephone calls were one second long or less. Consequently, the ULJ's finding that the duration of the majority of Leach's December 5 telephone calls was approximately one second is amply supported by the record.

As the ULJ found, the duration of Leach's telephone calls substantiates Craftmatic's claim that Leach did not speak to customers and, therefore, failed to follow the script that she was given. Leach does not argue that Craftmatic's request that she follow the script and code numbers appropriately was unreasonable. Failure to follow an employer's reasonable request constitutes employment misconduct. Thus, the ULJ correctly determined that Leach is disqualified from receiving unemployment benefits.

Affirmed.