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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1066**

Aaron W. Klemmensen
Relator,

vs.

Cargill Financial Services Corp.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 6, 2008
Affirmed
Shumaker, Judge**

Department of Employment and Economic Development
File No. 18031 06

Aaron W. Klemmensen, 4020 Lake Ridge Drive, Big Lake, MN 55309 (pro se relator)

Cargill Financial Services Corporation, Attn: Human Resources, 12700 Whitewater Drive, Minnetonka, MN 55343 (respondent-employer)

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Considered and decided by Shumaker, Presiding Judge; Willis, Judge; and Poritsky, Judge.*

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

UNPUBLISHED OPINION

SHUMAKER, Judge

In this certiorari appeal, relator challenges the unemployment law judge's determination that he was disqualified from receiving unemployment benefits because he committed employment misconduct by lying to his supervisors and falsifying records. We affirm.

FACTS

Relator Aaron W. Klemmensen worked for respondent Cargill Financial Services Corporation as a records coordinator from August 24, 2004 through October 12, 2006.

On September 29, 2006, while Klemmensen was on vacation, a records supervisor opened a drawer in Klemmensen's desk to look for labels and found a stack of backlogged interfilings. The next day, the supervisor looked in another drawer in Klemmensen's desk and found additional backlogged interfilings. Interfilings are documents from Cargill customers that are to be stored in their physical files. Cargill charges its customers when their documents are filed. Klemmensen had previously told his supervisors that he had completed all of his interfilings and, relying on Klemmensen's representation, Cargill charged its customers. In total, 305 backlogged interfilings were found in Klemmensen's desk, some of which were nine months old.

Cargill also monitored its employees' work with record-management software. This software enabled Cargill to determine what customer accounts each employee worked on and how much time was spent on those accounts. Klemmensen stated on his time sheets, required as part of Cargill's time-management study, that he had spent a

certain number of hours working on interfiling. The interfilings found in his desk contradicted Klemmensen's time sheets, which in turn were inconsistent with the management software.

Klemmensen was aware of Cargill's policies prohibiting employees from falsifying documents, giving misleading or false information, and misrepresenting information to supervisors. He knew that if he violated any of these policies he could be terminated. On October 12, 2006, Cargill terminated Klemmensen because he falsified documents and lied to his supervisors.

After his termination, Klemmensen applied for unemployment benefits, stating that he and Cargill decided to part ways and that the company no longer needed his services. He did not reveal that he had been terminated for violating company policies. Respondent Department of Employment and Economic Development (DEED) made an initial determination that Klemmensen was qualified for benefits and paid them to him beginning November 17, 2006. Cargill appealed DEED's determination, and a hearing was held before the unemployment law judge (ULJ). Ultimately, the ULJ ruled that Klemmensen was not entitled to benefits because he was terminated for employment misconduct and that he was obligated to repay the benefits he had received. The ULJ denied Klemmensen's request for reconsideration, and this certiorari appeal followed.

DECISION

Klemmensen challenges the ULJ's decision disqualifying him from unemployment benefits, arguing that his conduct was not reason enough to support a

discharge. He contends that he was honest with his supervisor and that he never had a negative report about his work until the point of discharge.

When an employer discharges an employee for employment misconduct, the employee is disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2006). Employment misconduct is intentional, negligent, or indifferent conduct that displays 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).

“Whether an employee committed employment misconduct is a mixed question of fact and law.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). “Whether an employee committed a particular act is a question of fact.” *Id.* Whether an employee’s actions constitute misconduct is a question of law to be reviewed by the court de novo. *Id.*

This court reviews factual findings in the light most favorable to the decision. *Jenkins v. Am. Express Fin. Corp.*, 721 N.W.2d 286, 289 (Minn. 2006). The ULJ’s determination will be affirmed unless the decision derives from unlawful procedure, relies on error of law, is unsupported by substantial evidence, or is arbitrary and capricious. Minn. Stat. § 268.105, subd. 7(d)(3)-(6) (2006)

We conclude that the record fully supports the ULJ’s determination that Klemmensen was properly discharged for employment misconduct and is disqualified from unemployment benefits. Klemmensen was discharged for two reasons. First, he hid backlogged interfilings in his desk drawers, and each month when his supervisors asked

about backlogs, he represented that there were none. Cargill then charged its customers for Klemmensen's services, even though the services had not been performed.

This court has held that lying to an employer about an important part of a job violates the standards of behavior the employer has a right to expect and amounts to employment misconduct disqualifying the applicant from unemployment benefits. *Cherveny v. 10,000 Auto Parts*, 353 N.W.2d 685, 688 (Minn. App. 1984). Klemmensen's conduct was in clear violation of Cargill's policies and resulted in customers being charged improperly. Klemmensen also admitted at the hearing that he misrepresented to his supervisor that he had completed his work. This was, therefore, a violation of the standard of behavior the employer had a right to reasonably expect of Klemmensen as an employee and amounts to employee misconduct.

Second, Klemmensen was discharged because he falsified his time sheets by improperly recording the amount of time he spent on files and the number of files he had completed. This conduct also violates the standards Cargill expected of Klemmensen as an employee. Falsifying time sheets used by the company to complete a time-management study is tantamount to deceiving the employer. This is misconduct and disqualifies Klemmensen from receiving unemployment benefits.

An applicant for unemployment benefits who is unemployed for a reason other than unavailability of work must disclose all the facts of which he is aware as to the reason for his unemployment. Minn. Stat. § 268.101, subd. 1(d) (2006). Furthermore, “[i]f an individual has received unemployment benefits to which the individual was not entitled, he or she shall promptly return such benefits or the Department shall issue an

overpayment notice requiring repayment of those overpaid benefits.” *Pinotti v. Comm’r of Jobs & Training*, 448 N.W.2d 899, 900 (Minn. App. 1989); *see also* Minn. Stat. § 268.18 (2006) (regarding overpayment of unemployment benefits).

Upon Klemmensen’s termination, Cargill told him the reason for his discharge. Klemmensen falsely claimed entitlement to unemployment benefits by failing to disclose his termination from Cargill for employment misconduct. Had he made that disclosure, DEED would have denied his application from the outset.

The ULJ properly determined that Klemmensen was not entitled to any unemployment benefits, that the entire amount he was paid constitutes an overpayment under Minn. Stat. § 268.101 (2006), and that he is obligated by law to repay all amounts he has received.

Affirmed.