

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1391**

Lauren E. Schnarr,
Relator,

v.

Express Scripts Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 1, 2008
Affirmed
Worke, Judge**

Department of Employment and Economic Development
File No. 3105 07

Lauren E. Schnarr, 1905 Parkwood Drive, Apt. 205, South St. Paul, MN 55075 (pro se relator)

Express Scripts Inc., c/o Thomas & Thorngren, Inc., P.O. Box 280100, Nashville, TN 37228 (respondent)

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

Considered and decided by Stoneburner, Presiding Judge; Worke, Judge; and Muehlberg, 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UNPUBLISHED OPINION

WORKE, Judge

Relator challenges the decision by the unemployment-law judge that she was discharged for misconduct and disqualified from receiving unemployment benefits after she harassed a coworker, arguing that she merely followed the direction of her supervisor in attempting to retrieve a ring. We affirm.

DECISION

This court may affirm the decision of the unemployment-law judge (ULJ), remand the case for further proceedings, or reverse or modify the decision if

the substantial rights of the petitioner may 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).

The ULJ determined that relator Lauren E. Schnarr was disqualified from receiving unemployment benefits because she was discharged for misconduct from her employment with respondent Express Scripts Inc. Whether an employee has committed employment 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 a

particular act is a question of fact.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). In making factual findings, the ULJ must make credibility determinations, which we accord deference and review the findings in the light most favorable to the decision. *Id.* The ULJ’s findings will not be disturbed when they are substantially supported by the evidence. *Id.* But whether an act constitutes employment misconduct is a question of law, which we review de novo. *Id.*

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). An employee’s refusal to abide by an employer’s reasonable policies and requests constitutes employment misconduct. *Schmidgall*, 644 N.W.2d at 804.

Relator was discharged after she violated Express Scripts’ harassment policy by continuously accusing a coworker of stealing her ring, despite being told that she could not make such accusations without any proof. Relator argues that she was following the direction of her supervisor in attempting to get her ring back by taking matters into her own hands. But relator’s supervisor testified that he repeatedly warned her that it was not appropriate for her to confront her coworker about the ring in person or through e-mail. The record reflects that relator continued to confront her coworker after her coworker filed a harassment complaint with human resources. Subsequently, relator and her coworker got into an argument, after which both were discharged.

The ULJ determined that Express Scripts has a right to expect its employees to treat other employees with respect and that relator's conduct displayed a serious violation of the standards of behavior the employer had a right to reasonably expect. Following relator's request for reconsideration, the ULJ noted that the credibility of the evidence submitted by both parties had been evaluated and that the employer was more credible. The ULJ specifically stated that the parties submitted conflicting evidence, and as a result, the decision must be based on the evidence that is more credible. The ULJ determined that "[t]he eyewitness testimony and contemporaneous documentation submitted by Express Scripts was detailed, consistent, and outlined a more probable sequence of events than the evidence submitted by [relator]." *See* Minn. Stat. § 268.105, subd. 1(c) (2006) ("When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the [ULJ] must set out the reason for crediting or discrediting that testimony."). Viewing the findings in the light most favorable to the decision and giving due deference to the ULJ's credibility determination leads to the conclusion that relator was discharged for misconduct for harassing a coworker and, therefore, is disqualified from receiving unemployment benefits.

Affirmed.