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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1309**

Deanna C. Strom,
Relator,

vs.

Spa 5101 Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 28, 2009
Affirmed
Ross, Judge**

Department of Employment and Economic Development
File No. 20516166-2

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(pro se relator)

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Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

This certiorari appeal arises from a nail technician's discharge from employment from a salon for sharing personal information with a customer after her employer told her not to. Deanna Strom appeals from an unemployment law judge's decision that she is disqualified from receiving unemployment benefits because she was discharged for employment misconduct. Strom contends that her employer, Spa 5101, did not properly appeal the Department of Employment and Economic Development's determination of eligibility and that even if the spa did appeal, Strom's employment was not terminated for misconduct. Because we conclude that Spa 5101 appealed the determination of eligibility and that substantial evidence supports the finding that Strom committed employment misconduct, we affirm.

FACTS

Deanna Strom began working as a nail technician at Spa 5101, a self-described "exclusive salon," in October 2006. The spa terminated Strom's employment in January 2008 for "continuing to share her personal life with clients" after the spa instructed her not to do so. Spa 5101 has a policy prohibiting employees from engaging in personal conversations with clients: "Absolutely no personal conversations in areas where clients are." Strom acknowledged that she was aware of the written policy. Ginny Emrich, the spa's owner, stated that the spa's manager, Stacy Utt, had "several conversations" with Strom regarding Strom discussing personal affairs with clients before finally discharging her.

Strom called Stacy Utt and told her that she could not work as scheduled because she had been assaulted by her boyfriend. Utt told Strom that she was excused from work, but she reminded Strom that when she returned, she was not to talk about the incident with the spa's clients. Strom returned to work the next day. She brought along a hospital report that documented that she had been assaulted and injured by her boyfriend. Strom showed the hospital report to her first client when the client asked about marks on Strom's neck and face. Strom testified that she showed the client the report because she was told only that she could not "talk" with clients about the incident. Spa 5101 discharged Strom for violating the spa's policy.

Strom applied for unemployment benefits. An adjudicator for the Department of Employment and Economic Development determined that "[t]here was no employment misconduct by [Strom]" and that she was therefore eligible to receive unemployment benefits. After the spa received notice of DEED's determination that Strom was eligible for benefits, Emrich wrote a letter to DEED, underlined the sentence in the determination of eligibility that stated, "There was no employment misconduct," and wrote, "Please read our response." DEED interpreted Emrich's reply as an appeal of its decision and referred the matter to an unemployment law judge for a hearing.

There was some confusion regarding the spa's appeal at the hearing. The following colloquy demonstrates this confusion:

EMRICH: I don't know what's going on . . . when [Strom] is saying that I appealed . . . The only time I've ever conducted any paperwork with [DEED] is when [Strom] was let go, [and DEED] sent me papers of why was she let go, and it says Determination of Eligibility . . . And I see there was no

employment misconduct by the applicant. I must have misunderstood something. I don't know why I wrote that, but I just wrote "please read our response" on the back of that sheet. . . .

ULJ: Well, okay. I guess . . . I have to clarify this then. We had this hearing because, it was set up because [DEED] said the employer, Spa 5101, filed an appeal and wanted to—

EMRICH: Not to my knowledge. I—

ULJ: Oh, well—

EMRICH: I only—

ULJ: Well, I wonder if [DEED] misunderstood. They took it as that you were appealing the determination because it was sent on February 6 and then you sent it back with that underlined. They assumed you meant to appeal it.

EMRICH: No, I just sent it back with all the papers with—

ULJ: Oh, did you want to withdraw the appeal? Did you not mean to appeal it?

EMRICH: I don't think [Strom] should get unemployment [benefits] from Spa [5101].

ULJ: Well, I don't have jurisdiction unless you actually appealed it. I can't do this hearing and the decision would become final unless it was appealed within the period of time allowed.

EMRICH: Okay.

ULJ: And so if you're saying you didn't appeal it or mean to appeal it, we need to go into this. I don't have jurisdiction. It's not up to me to do this hearing unless you appealed the decision.

EMRICH: All right. I'm appealing it . . .

Because the ULJ understood that the spa intended to appeal DEED's initial determination of eligibility, the ULJ proceeded and decided that Strom had been discharged for employment misconduct and was therefore ineligible for unemployment benefits.

Strom requested that the ULJ reconsider her opinion, arguing that "Spa 5101 did not file a timely appeal." Strom also argued that she did not violate the spa's request or policy prohibiting personal conversation because she had not actually "talked" to the client about her personal life. The ULJ affirmed her earlier findings of fact and decision. This appeal follows.

DECISION

Strom appeals the ULJ's decision by writ of certiorari. On certiorari appeal, this court may remand, reverse, or modify the ULJ's decision if the relator's substantial rights "may have been prejudiced because the findings, inferences, conclusion, or decision are . . . made upon unlawful procedure[,] . . . 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) (2008). Strom argues that the ULJ erred by concluding that Spa 5101 appealed DEED's determination that Strom was eligible for unemployment benefits. She also disputes the ULJ's conclusion that she was discharged for employment misconduct.

We first address the ULJ's decision that the spa appealed. We then address the question of whether Strom's actions constitute employment misconduct.

I

Strom argues that the spa's letter to DEED was not a proper appeal. DEED argues that the spa's letter "could reasonably be interpreted to mean that Spa 5101 disagreed

with the determination of eligibility” and therefore the ULJ properly determined that it was an appeal. The ULJ applied Minnesota Statutes section 268.103, subdivision 2 (2008), which governs an applicant’s appeal, and determined that the statute also applies to an employer’s appeal. Interpretation and application of a statute is a question of law, which this court reviews de novo. *In re Kleven*, 736 N.W.2d 707, 709 (Minn. App. 2007).

Minnesota Statutes section 268.103, subdivision 2, relates to an applicant’s appeal from a DEED decision and provides that “[a] written statement . . . to the department that could reasonably be interpreted to mean that an involved applicant is in disagreement with a specific determination . . . is considered an appeal. No specific words need be used for the written statement to be considered an appeal.” The ULJ accurately observed that “[t]here is no provision for employer appeals similar to this.” But the ULJ concluded that although the statute refers only to applicants’ appeals, it is reasonable to apply this permissive approach to employers’ appeals. We agree that there is no statutory or other basis to treat an employer’s attempt to appeal differently than an employee’s attempt. We hold that the appeal requirements described in Minnesota Statutes section 268.103, subdivision 2, also apply to employers’ appeals from DEED’s determinations.

After Emrich received DEED’s “Determination of Eligibility” letter, she underlined the sentence that stated, “There was no employment misconduct by the applicant.” In the margin beside that sentence, she wrote, “Please read our response.” Her response included the spa’s “Guidelines for Professional Conduct” that each employee was required to read and sign before beginning employment at the spa. The

letter included additional documentation relating to the spa's argument that Strom committed employment misconduct. Unfortunately, that additional documentation was not included in the record on appeal. But applying section 268.103 to the spa's responsive letter, the letter could reasonably be interpreted as an appeal. We know that DEED interpreted the spa's letter as an appeal because it responded by scheduling a de novo hearing before the ULJ. The letter is therefore "a written statement . . . to the department" that was "interpreted to mean" that the spa disagreed with DEED's determination.

Strom insists that "[t]here was 'NO' appeal," citing the statements that Emrich made at the hearing. The transcript informs us that Emrich was simply unclear of the meaning of the term "appeal," but there is no real question that she was contesting the preliminary eligibility determination. When asked if the spa appealed DEED's determination of eligibility, Emrich stated, "Not to my knowledge." The ULJ inquired further and specifically asked Emrich, "Did you mean to appeal it?" Emrich responded, "I don't think [Strom] should get unemployment." This exchange reveals that although Emrich was not familiar with procedural terminology, her intent was to appeal specifically because she disagreed with DEED's determination that Strom had not committed misconduct. Although Emrich's apparent misunderstanding about procedural terminology introduces a slight ambiguity, her statements and written response considered together establish that Emrich intended that her written response be an appeal.

The record supports the ULJ's conclusion that the spa intended to appeal and that the spa's appeal was therefore timely filed. We must now determine whether Strom was discharged for employment misconduct.

II

An employee who is discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008). Employment misconduct includes any intentional or negligent conduct that seriously violates the standards the employer may reasonably expect the employee to meet or that clearly demonstrates a substantial lack of concern for the job. Minn. Stat. § 268.095, subd. 6 (2008). Whether an employee's conduct disqualifies her from receiving unemployment benefits is a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). It is a question of fact whether the employee committed a particular act, and this court reviews a ULJ's fact findings in the light most favorable to the decision. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We will not disturb factual findings of the ULJ when they are supported by substantial evidence. *Id.* Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002). Whether a particular act constitutes misconduct is a question of law, which this court reviews de novo. *Schmidgall*, 644 N.W.2d at 804.

As a general rule, an employee's knowing violation of an employer's policies, rules, or reasonable requests constitutes employment misconduct. *Montgomery v. F & M*

Marquette Nat'l Bank, 384 N.W.2d 602, 604 (Minn. App. 1986), *review denied* (Minn. June 13, 1986). Strom argues that she did not commit misconduct because she did not knowingly violate the spa's policies and she complied with the spa's request not to talk about her personal issues with clients. Strom testified, "[W]hen my first client [arrived], I had a cut under my right eye and choke marks on my neck." She explained, "[T]he first thing [the client] said is 'what happened?'" Strom told the client, "I can't talk to you about it." But Strom handed the client her hospital report that explained that her boyfriend had attempted to strangle her. The ULJ asked Strom, "[W]hy would you show [the hospital report] to a client?" Strom explained, "Well, it's because I had marks on my face and she asked me what had happened. And [the papers] were sitting right next to me. . . . [So] rather than discussing it with her, I showed her where it said contusion, and that explained [it]." (Emphasis added.) Strom asserted that she "didn't say a word to [the client] about it" and "once she read it, it was over."

The ULJ concluded that Strom was discharged for committing misconduct because Strom disregarded the spa's specific instructions "not to talk about the [personal] incident with clients." The ULJ noted that although the spa had instructed Strom to not "talk or tell or speak," about the incident, Strom's actions of showing the client the hospital report that detailed the incident violated the directive because "it was still clear [that the spa] did not want Strom sharing personal information with clients." The ULJ therefore concluded that "Strom's actions were in disregard of her employer's instructions." This conclusion is unassailable.

The spa's written policy states, "Absolutely no personal conversations in areas where clients are." The spa reminded Strom of this policy several times. Emrich testified that Strom brought her pastor's business cards to work and would hand them out and discuss her religious life. The spa's management had "several conversations" with Strom and told her that she should not pass out her pastor's cards or have personal discussions with clients. Emrich also stated that she told Strom not to discuss her sexual relationship to her boyfriend because the "coworkers are disgusted by what [she] tell[s] them." And just one day before the spa discharged Strom, Utt called Strom and told her to "not talk about" her domestic-violence situation at work.

Strom's argument that she did not violate the spa's policy or directive because she did not actually "talk" about the incident is not persuasive for two reasons. First, it overlooks that Strom was aware that providing even *written* personal communication also violated the spa's policy; the spa had previously applied the policy to prohibit Strom from distributing her pastor's business cards. Strom clearly and knowingly violated the spirit of the directive. Second, we are not particularly concerned about whether Strom's literal distinction between "talk to" and "communicate with" is a convincing defense to the spa's charge that she violated the policy. Our concern is whether the offense for which she was discharged constitutes employment misconduct. It is not our role to require the spa to apply its reasonable policy in only a literal fashion. The spa's expectation that Strom not share her personal life with clients was reasonable, and under the spa's interpretation of its policy and directives, Strom's conduct violated that reasonable expectation.

Strom's conduct violated the spa's policy and the resulting termination therefore was for employment misconduct. Additionally, Strom's conduct as a whole supports the finding that she was terminated for committing employment misconduct. This court has held that an employee's behavior as a whole may be considered when determining the propriety of a discharge and even if "unrelated to earlier misconduct, further misconduct . . . could serve as the 'last straw' supporting a termination of her employment." *Drellack v. Inter-County Cmty. Council*, 366 N.W.2d 671, 674 (Minn. App. 1985). Considering Strom's multiple violations and warnings, her sharing the hospital report with the client served as the last straw.

The record supports the determination that Strom was discharged for employment misconduct.

Affirmed.