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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1398**

Ronald Schmidt,
Relator,

vs.

Blue Lily Farms LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed July 21, 2009
Affirmed
Collins, Judge*
Concurring specially, Minge, Judge**

Department of Employment and Economic Development
File No. 20597704-3

Ronald Schmidt, 23714 Dodd Road, Le Center, MN 56057 (pro se relator)

Beth A. Serrill, 127 South Second Street, Mankato, MN 56002 (for respondent Blue Lily Farms)

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Considered and decided by Minge, Presiding Judge; Worke, Judge; and Collins, 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UNPUBLISHED OPINION

COLLINS, Judge

Relator challenges the decision of the unemployment law judge (ULJ) that relator is ineligible to receive unemployment benefits because he engaged in employment misconduct, arguing that (1) he was an owner of the employer/business; (2) he was not acting as an employee when he voted to cancel the lease, the result of which would be to put his employer out of business; and (3) he voted to terminate the lease in order to prevent illegal activities. We affirm.

FACTS

In 2002, Blue Lily Farms, LLC (Blue Lily) entered into a 30-year lease agreement with relator Ronald Schmidt for the use of Schmidt's land. Schmidt was employed by Blue Lily as a facilities manager from 2002 through 2008, and also served on Blue Lily's three-member board of governors.

At a January 15, 2008 Blue Lily board meeting, the board discussed terminating the Blue Lily/Schmidt lease, knowing that it would put Blue Lily out of business and result in the loss of all improvements made to the property. Schmidt and one other board member voted to terminate the lease. The third board member, a representative of Camas, Inc., a part-owner of Blue Lily, voted in opposition. On January 22, 2008, Blue Lily discharged Schmidt for voting to terminate the lease agreement.¹

¹ In a separate pending civil action, the district court has granted a temporary injunction prohibiting the lease termination.

Schmidt applied for and was awarded unemployment benefits. On appeal, the ULJ reversed the initial determination of eligibility, finding that Schmidt was discharged for employment misconduct and thus is ineligible for benefits. This certiorari appeal followed.

D E C I S I O N

When reviewing the decision of a ULJ, this court 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) (Supp. 2007).

Employment misconduct

An applicant is ineligible for unemployment benefits if he was discharged from employment for misconduct. Minn. Stat. § 268.095, subd. 4(1) (Supp. 2007). 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) (Supp. 2007). 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's act constituted disqualifying misconduct is a question of law, which this court reviews de novo. *Id.*; *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 27 (Minn. App. 2007).

Schmidt first argues that because he is an owner of Blue Lily, Blue Lily did not have the power to discharge him. But in his application for unemployment benefits, Schmidt identifies Blue Lily as his employer, states that Camas is a 60% owner of Blue Lily, and asserts that he was discharged by the Camas chief executive officer. There is no indication in the unemployment application or elsewhere in the record that Schmidt was not employed by Blue Lily or that Blue Lily did not have the power to terminate Schmidt's employment. Issues of Blue Lily's ownership and questions as to whether the decision to discharge Schmidt occurred at a legal board meeting are matters for the district court to decide in the context of the pending civil action.

We are not persuaded by Schmidt's contention that he was not acting as a Blue Lily employee when he voted to terminate the lease. Employees owe a duty of loyalty to their employers. *Marn v. Fairview Pharmacy Servs.*, 756 N.W.2d 117, 121 (Minn. App. 2008), *review denied* (Minn. Dec. 16, 2008); *see Rehab. Specialists, Inc. v. Koering*, 404 N.W.2d 301, 304 (Minn. App. 1987) (stating that employee's duty of loyalty prohibits employee from competing with employer while employee is employed). And although Schmidt may have been acting as a board member when he voted, employment misconduct includes conduct that occurs "on the job or off the job." Minn. Stat. § 268.095, subd. 6(a).

Schmidt next argues that he voted to terminate the lease because he wanted “to save Blue Lily from liability and criminal actions,” thus contending that his actions did not amount to a breach of the duty of loyalty, and that he did not commit employment misconduct. But Schmidt seemingly acted to terminate the lease without thought to or interest in the fact that this would cause the demise of the business. Misconduct includes “any intentional, negligent, or indifferent conduct.” *Id.* Two Camas representatives testified that Schmidt’s vote to terminate the lease was an intentional act, or at the very least indifferent conduct, that assuredly would result in Blue Lily closing its business and abandoning valuable leasehold improvements. Moreover, the district court’s order in the pending civil action, of which the ULJ took judicial notice, included a finding that termination would cause irreparable harm because Blue Lily’s interest in the lease is its primary asset—a fact that would have been known to Schmidt as a board member and the lessor. Schmidt also conceded that Camas owns “all the chickens, and equipment which they can remove,” further indicating he knew his conduct would have a devastating impact on Blue Lily.

We have held that an employee breaches the duty of loyalty, and thus engages in employment misconduct, by encouraging a third party to terminate a contract between the employer and the third party. *Marn*, 756 N.W.2d at 120-22. Schmidt’s conduct went beyond that in *Marn*. Here, Schmidt did not merely encourage the termination of the lease, his vote directly effected it. Schmidt’s vote, the known effect of which would be to put his employer out of business, falls well below “the standards of behavior the employer has the right to reasonably expect.” Minn. Stat. § 268.095, subd. 6(a).

Based on the record, we conclude that the ULJ did not err by finding that Schmidt had engaged in employment misconduct and therefore is ineligible for unemployment benefits.

Affirmed.

MINGE, Judge (concurring specially)

I concur. Relator Schmidt was a member of the board of directors of his employer, respondent Blue Lily Farms, LLC. As a director, relator had an obligation to use his best judgment in voting on matters. Relator was also the owner of the land on which Blue Lily maintained a livestock confinement facility. As an owner of the land, it appears that he would benefit from the termination of the lease and that he had an interest in minimizing possible environmental problems caused by the facility. In sum, relator was wearing three hats: (1) employee with a duty of loyalty; (2) director with a duty to use independent judgment on corporate matters; and (3) landowner-lessor with an understandable and legitimate self-interest.

When relator voted to terminate the lease, he apparently gave priority to his interest as a landowner and not his duty as an employee. This decision created a hostile relationship with the majority owner of relator's employer, Blue Lily. I would not characterize relator's voting decision as misconduct but rather a basic determination to terminate his employment. Certainly, he should have realized that Blue Lily's owners would no longer trust or allow him to work as an at-will employee. Furthermore, the ownership of Blue Lily would no doubt vote him off the board and the lease dispute might well end up in litigation. Under the circumstances, relator may have acted consistent with his duty as a board member or his best interest as an individual.

I would characterize relator's unemployment as a result of a fundamental falling out among business associates and as a quit or resignation without cause attributable to the employer and hold that he was not eligible for unemployment benefits on that ground.