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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-1575**

Wood Chip of Princeton, Inc.,  
Relator,

vs.

Robert Clarin,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed July 28, 2009  
Affirmed  
Toussaint, Chief Judge**

Department of Employment and Economic Development  
File No. 20503363-3

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respondent DEED)

Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and  
Muehlberg, Judge.\*

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\* 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## UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Relator-employer Wood Chip of Princeton, Inc. challenges the decision of the unemployment law judge (ULJ) that its discharged employee, respondent Robert Clarin, is eligible for unemployment benefits because the altercation that led to Clarin's discharge was a single incident that did not have a significant adverse impact on relator. Because a single incident that does not have a significant adverse impact on the employer is not misconduct under Minn. Stat. § 268.095, subd. 6(a) (Supp. 2007), we affirm.

### DECISION

An employee who is discharged for misconduct is not eligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (Supp. 2007). “Whether a particular act constitutes disqualifying misconduct is a question of law, which this court reviews de novo.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Burden of proof is irrelevant to a determination of employee misconduct, which is based on a preponderance of the evidence. *Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 205 (Minn. App. 2004), *review denied* (Minn. Mar. 30, 2004); Minn. Stat. § 268.03, subd. 2 (Supp. 2007).

Clarin worked for relator as a sales representative. In November 2007, relator notified its employees that it would shut down from Monday, December 24, 2007, to Wednesday, January 2, 2008. Employees would be paid only for the holidays, December 25 and January 1; to be paid for the other days, they would have to take vacation time and fill out a form indicating that they were doing so. Clarin did not fill out a vacation form.

Despite the shutdown, Clarin, with the knowledge of relator's owners, worked on December 22, 24, 27-29, and 31 to prepare for a major trade show held from January 9-11, 2008.

The incident that led to Clarin's discharge occurred on January 11 at the trade show. Relator's employee in charge of human resources and payroll told Clarin that he was not being paid for the days he worked during the shutdown because he had not filled out a vacation-time form. An altercation developed during which Clarin used profanity and raised his voice. Clarin was discharged for his behavior during this altercation.

Respondent Department of Employment and Economic Development (DEED) notified Clarin that he was not eligible for unemployment benefits because he was discharged for misconduct. Clarin appealed and, after a telephone hearing, the ULJ concluded that the altercation was "a single incident that [did] not have a significant adverse impact on the employer" and was therefore "not employment misconduct" under Minn. Stat. § 268.095, subd. 6(a). Clarin was notified that he had been discharged for reasons other than misconduct and was therefore eligible for benefits. Relator requested reconsideration, but the ULJ affirmed the decision.

On appeal, relator argues that Clarin's conduct on January 11 was not a single incident but two incidents and that the incidents did have a significant adverse impact on relator. Neither argument has merit.

### **1. Single Incident**

A preponderance of the evidence supports DEED's argument. The human resources manager submitted a written statement giving her view of the altercation. She

said that, after she told Clarin that she had not directly deposited his check because she had just received payroll information the evening before, he (1) “became enraged and was cursing at me in the booth at the trade show for approximately 2-3 minutes”; (2) “left the booth and walked up the hallway . . . [and] motioned for me to come up the hallway with him”; and (3) “commenced yelling (voice raised) and cursing . . . to me . . . . for 10 to 15 minutes.”

The human-resources manager testified at the hearing, and her testimony corroborated her statement as to the length and locations of the altercation. She testified that the first part of the altercation in the booth “felt like it went on a long time” but “was only two or three minutes” and that she and Clarin then “switched locations.” When asked to confirm whether the altercation in the foyer “lasted ten to fifteen minutes,” she answered, “Yes.” When the ULJ asked if the first part of the altercation started in the booth and the second part occurred in the foyer, the human-resources manager answered, “Correct.” Thus, the human-resources manager’s statement and testimony indicate that there was one single incident during which she and Clarin walked from a booth on the convention floor into the foyer and that the entire incident lasted no more than 20 minutes. Relator’s argument that there were two incidents is without merit.

## **2. Significant Adverse Impact**

Relator also argues that the incident had a significant adverse impact on relator. The human-resources manager’s statement and testimony indicate that the altercation did not prevent Clarin from functioning appropriately on behalf of relator. She stated that the altercation stopped when a man approached them and Clarin “turned from [her], shook

the gentleman's hand, and started talking to him as if nothing had happened." The human-resources manager testified that, when she joined Clarin in the foyer, he "continued to . . . rant and rave. A gentleman came over to talk to [Clarin] . . . [who] put his hand out, shook this gentleman's hand, and started to talk to him as if everything was just fine and [Clarin] had no cares in the world." The incident did not disturb Clarin's ability to deal appropriately with others on behalf of relator.

Other testimony supports the finding that this incident did not have a significant adverse impact on relator. One of relator's owners was asked if she had received, or if any of relator's employees had reported receiving, "complaints of any customers or people that might have heard" the altercation between Clarin and the human-resources manager. The owner answered, "I have not received any complaints from any customers that heard those infractions on those days. . . . I have not receive[d] any complaints from customers regarding his behavior on that particular day."

Relator relies on *Skarhus v. DaVanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (holding that discharged employee's theft of small amount was not single incident that did not have a significant adverse impact on her employer within meaning of Minn. Stat. § 268.095, subd. 6(a)). But *Skarhus* is distinguishable; the court concluded that the employee's theft had a significant adverse impact on the employer because the employee's job responsibilities included handling money and accounting for inventory and "[the employer] could no longer entrust her with those responsibilities." *Id.* Here, neither party has suggested any connection between Clarin's ability to do his job for relator and the January 11 altercation.

Given the lack of evidence of any impact on relator, Clarin's altercation was "a single incident that does not have a significant adverse impact on the employer" and was not employment misconduct. *See* Minn. Stat. § 268.095, subd. 6(a).

**Affirmed.**