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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-2058**

Timothy R. Valentine,  
Relator,

vs.

United Parcel Service Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed August 18, 2009  
Affirmed  
Harten, Judge\***

Department of Employment and Economic Development  
Agency File No. 21017399-3

Timothy R. Valentine, 2402 George Street, La Crosse, WI 54603 (pro se relator)

United Parcel Service Inc., c/o TALX UCM Services Inc., P.O. Box 283, St. Louis, MO  
63166 (respondent employer)

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

Considered and decided by Klaphake, Presiding Judge; Stauber, Judge; and  
Harten, Judge.

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

## UNPUBLISHED OPINION

**HARTEN**, Judge

Relator, pro se, challenges the conclusion of the unemployment law judge (ULJ) that relator was discharged for misconduct. Because the ULJ's findings are substantially supported by the evidence and because we see no error of law in the conclusion that relator committed misconduct, we affirm.

### FACTS

In October 2005, relator Timothy Valentine began part-time work for respondent United Parcel Service (UPS). Relator also had a full-time job elsewhere.

In order to care for his chronically ill son in La Crosse, Wisconsin, relator applied for and received intermittent leave under the Family Medical Leave Act (FMLA) from August 2007 to December 2007. After his leave expired, relator submitted an incomplete application for a transfer to La Crosse.

On 4 February 2008, relator was discharged from his full-time job and filed for unemployment benefits. On 6 February, relator supplied UPS with notes from medical practitioners attesting to his medical illness and mental duress. UPS put relator on medical-leave status, and he did not return to work. He received disability benefits for the period January-March 2008.<sup>1</sup>

In April 2008, UPS sent relator a letter requesting specific information as to his medical status and plan to return to work. The physician's letter that relator sent in reply

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<sup>1</sup> To accommodate relator, UPS backdated his request for disability to January.

did not provide this information. On 18 April, when it had not received the information, UPS discharged relator.

Relator applied for unemployment benefits with the Department of Employment and Economic Development (DEED). On 16 July 2008, relator was informed by DEED that he was and had been ineligible for benefits since February 2008 because he was on a voluntary paid leave of absence from his job at UPS and that he had been overpaid \$9,684. Relator challenged these decisions. A telephone hearing before a ULJ was scheduled, but relator was unable to participate because he was incarcerated. The hearing was rescheduled to a date when relator could participate. Following the hearing, the ULJ determined that: (1) relator was ineligible for benefits from 4 February 2008 until 18 April 2008 because he was on a paid leave of absence from UPS; (2) relator was ineligible for benefits after 18 April 2008 because he was discharged for misconduct; and (3) relator had been overpaid \$9,684.

Relator requested reconsideration, claiming that his employment with UPS was part time. The ULJ affirmed the previous decision, noting that, while a quit from a part-time job may not defeat eligibility for an individual who also has full-time employment, *see* Minn. Stat. § 268.095, subd. 1(5) (2008), “there is no similar provision when an applicant is discharged from part time employment for employment misconduct.” Relator challenges the conclusion that he committed misconduct.

### **DECISION**

We address first the adequacy of the evidence supporting the ULJ’s findings and then the ULJ’s conclusion that relator’s acts constituted employee misconduct.

## 1. Findings

Whether [an] employee committed a particular act is a question of fact. We view the ULJ's factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ. In doing so, we will not disturb the ULJ's factual findings when the evidence substantially sustains them.

*Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citations omitted).

Burden of proof is irrelevant in employee misconduct cases. *Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 205 (Minn. App. 2004), *review denied* (Minn. 30 Mar. 2004).

The ULJ found that “[i]n February of 2008, [relator] submitted two doctor’s notes stating he was unable to work due to ‘medical illness’ and ‘mental duress,’ but that he would be able to return to work full time without restrictions on February 10, 2008.” These notes are in the record. The first note is a copy of a printed form dated 1-17-2008 saying “To whom it may concern: This is to certify that\_\_\_\_\_ was seen in this Clinic this date for medical attention.” Handwritten words indicate that “[Relator] was suffering from mental duress which impeded his functioning and rendered him unable to perform normal work tasks.” The signature is followed by the letters “Eds”. The second note, on plain paper with no letterhead and dated 31 January 2008, says: “To whom it may concern: [Relator] is a patient under my care who has been unable to work due to medical illness since January 20th. He will be able to return to work full time without restrictions on February 10th, 2008.” The signature is followed by the letters “M.D.” These notes support the ULJ’s finding.

The ULJ also found that: “On April 3, 2008, [UPS] sent [relator] a letter asking for information on his current work status; work restrictions; length of time expected to be

off work; estimated return to work date; and date of next doctor's appointment." A copy of the letter is in the record. It reads:

We are aware that you have been off work since January 7th, 2008 due to medical reasons, and hope you are feeling better. . . .

At this time, we have no current documentation to support your absence from work. This letter will serve as notification that you have until April 12, 2008 to provide us with a letter or note from your health care provider indicating:

- your current work status[.]
- any work restrictions[.]
- length of time you are expected to be off work[.]
- estimated return to work date, and
- [d]ate of your next doctor's appointment.

The letter/note must include your health care providers' name, address and telephone number. The information should be faxed . . . . Please follow up with a call to [the addressee] to confirm it was received.

Failure to provide documentation which justifies your being off work will result in the separation of your employment at UPS.

Again, the ULJ's finding is supported.

The ULJ found that: "On April 10, 2008, [relator] provided a note [to UPS] . . . stat[ing] that, '[Relator] is a patient under my care for a medical illness. Although I can release him to return to work, I have advised him to remain in the La Crosse area.' This note had no contact information and was not on any letterhead." The record includes a copy of a letter on plain paper dated 10 April 2008 and stating, in addition to the quoted language, that "[t]he appropriate work restriction associated with his FMLA leave is to remain in the La Crosse area. I encourage you [UPS] to consider a transfer to La Crosse where he may continue to work with the restriction of only working in the La Crosse area."

Finally, the ULJ found that “[n]o additional information was provided, so [relator] was discharged.” Relator’s testimony supports this finding. When asked what the nature of his medical disability was, relator replied, “Actually the nature, it was just kind of more my son, he’s obviously a disabled 12 year old you know, physically, mentally and it’s basically the support there so obviously the mental type problems that I was going through you know obviously knowing that I’m going to lose an 11 year old [sic] son.” When the ULJ said, “But you don’t have any medical diagnosis,” relator replied, “I guess that’s not for me to say[;] I guess that’s for the doctor to say.” This supports the finding that relator provided no further information as to his alleged medical disability.

In her memorandum, the ULJ found that some of relator’s testimony was not credible. We defer to the ULJ’s credibility determinations. *Skarhus*, 721 N.W.2d at 344. Moreover, the transcript supports this determination. Relator testified that, while incarcerated, he filed for and received unemployment benefits, but when the ULJ said, “[Y]ou have to be available for work to collect unemployment and you have to be able to work as well,” relator answered, “Oh, I understand that.”

The UPS human resources generalist testified that relator had received \$3,207.71 in salary during his medical leave. The ULJ noted that relator had not reported this income, so it had not been taken into account in establishing his unemployment benefits from the loss of his full-time job. The ULJ told relator, “I do have a computer printout showing zero deductions” and he replied, “Yup, I caught onto that as you were going through, we can talk about that after [a] while too.” When the ULJ asked relator, “[H]ow did you justify collecting both disability and insurance benefits at the same time? Were

you able to work or not?”, relator replied that his disability was being unable to drive from La Crosse to a job in the Twin Cities.

The ULJ’s findings that: (1) relator’s testimony was not credible; (2) relator filed for unemployment benefits to which he was not entitled both while on disability and while incarcerated; and (3) relator failed to comply with the request from UPS for information about his medical condition, are all supported by substantial evidence.

## **2. Misconduct**

Misconduct includes any intentional or negligent conduct, on or off the job, that violates the standards of behavior an employer has a reasonable right to expect of an employee or that clearly displays a lack of substantial concern for the employment. Minn. Stat. § 268.095, subd. 6(a) (2008). Whether an employee’s acts constitute employment misconduct is a question of law and that we review de novo. *Skarhus* 721 N.W.2d at 344.

The ULJ concluded that “[relator’s] actions in failing to provide [UPS] with information it needed about his status and medical condition displayed a serious violation of the standards of behavior [UPS] has a right to reasonably expect of the employee and was employee misconduct.” “As a general rule, refusing to abide by an employer’s reasonable policies and requests amounts to disqualifying misconduct.” *Schmidgall v. Filmtec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002); *see also McGowan v. Executive Express Transp. Enters., Inc.*, 420 N.W.2d 592, 596 (Minn. 1988) (same); *Montgomery v. F & M Marquette Nat’l Bank*, 384 N.W.2d 602, 604 (Minn. App. 1986), *review denied* (Minn. 13 June 1986) (same); *Sandstrom v. Douglas Machine Corp.*, 372 N.W.2d 89, 91

(Minn. App. 1985) (“The general rule is that if the request of the employer is reasonable and does not impose an unreasonable burden on the employee, a refusal will constitute misconduct.”).

To support his continued absence from work, UPS asked relator to provide documents explaining his need for continued medical disability leave or, alternatively, to come to the Twin Cities to discuss his situation. These requests were reasonable, and UPS had a right to expect that relator would comply with one of the alternatives. Relator’s inaction violated the standard of behavior UPS had a right to expect. *See* Minn. Stat. § 268.095, subd. 6(a). Moreover, UPS having told relator that his failure to provide the requested information would be grounds for termination, relator’s inaction demonstrated a substantial lack of concern for his employment. *See id.*

Relator committed misconduct within the meaning of Minn. Stat. § 268.095, subd. 6(a), and he is ineligible for benefits because of that misconduct.

**Affirmed.**