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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-2014**

John Tiliuta,  
Relator,

vs.

Methodist Hospital,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed September 22, 2009  
Affirmed  
Toussaint, Chief Judge**

Department of Employment and Economic Development  
File No. 20967799-3

John Tiliuta, 3470 Alabama Avenue South, Apartment 9, St. Louis Park, MN 55416-2370 (pro se relator)

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Considered and decided by Toussaint, Chief Judge; Stoneburner, Judge; and Collins, Judge.\*

## **UNPUBLISHED OPINION**

**TOUSSAINT**, Chief Judge

Relator John Tiliuta challenges the decision of the unemployment-law judge (ULJ) that he was ineligible to receive unemployment benefits because he was discharged for misconduct after stealing a coworker's coffeemaker. Relator argues that his employer coerced him into resigning and that he had actually been fired, that his conduct did not constitute misconduct because he did not intend to steal the coffeemaker, and that he was discharged as a result of age discrimination. We affirm.

## **DECISION**

This court will affirm the decision by the ULJ unless it is affected by error of law or is “unsupported by substantial evidence in view of the entire record as submitted.” Minn. Stat. § 268.105, subd. 7(d) (2008). We defer to the ULJ's credibility determinations and do not disturb findings of fact unless they are not supported by substantial evidence. *Ywsyf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007).

Relator's coworker won a coffeemaker at a company party and stored it overnight at the workplace. When the coworker could not find it the next morning, he asked relator, who had been the last person to leave the previous evening, whether he had seen

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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.

it; relator denied taking it. The coworker reported the missing coffeemaker to his employer, which investigated. Surveillance video recorded the previous evening showed relator going out of the building carrying the coffeemaker, strapping it onto his bicycle, and leaving. The director of employee and labor relations confronted relator with this information and asked why he stole the coffeemaker; relator asserted that he had agreed to buy it from his coworker but had not yet paid him for it. The director told relator that he believed relator was lying and gave him the choice of resigning immediately or being fired. He warned relator that, if he chose to be fired, the theft would be reported to the police department. Under these circumstances, relator “resigned.”

We first address relator’s claim that the employer had coerced him into resigning and that the employer had actually discharged him. A quit occurs “when the decision to end the employment was, at the time the employment ended, the employee’s.” Minn. Stat. § 268.095, subd. 2(a) (2008). By contrast, a discharge occurs “when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity.” *Id.*, subd. 5(a) (2008). When an employee is given the option of quitting or being discharged, the employer’s action is considered a discharge. *See Dahl v. Del Dee Foods, Inc.*, 378 N.W.2d 656, 657-58 (Minn. App. 1985) (holding that where record supported determination that employee was given choice of resigning or being discharged, and was not offered the opportunity to accept demotion, he was considered discharged).

The ULJ ruled that, when relator submitted his resignation, it was a mere formality because he did not have the option of continuing to work for the employer; instead, he

had been discharged. This finding is supported by substantial evidence and, as a matter of law, the ULJ correctly ruled that the employer discharged relator.

Next, we address relator's argument that he did not commit misconduct because the incident was unintentional. He asserts that his coworker had offered to sell him the coffeemaker for \$5.00 the previous evening but that he had not responded to the offer. He contends that it was only when he saw that the coffeemaker had been "abandoned" at the end of the evening that he took it and that, on the following day, his coworker changed his mind about selling it and instead reported it stolen. Relator notes that he has since returned the coffeemaker to his coworker.

An employee who is discharged for employment misconduct is not eligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008). "Employment misconduct" is defined as "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) (2008). A single incident that does not result in a significant adverse impact on the employer does not constitute misconduct. *Id.* But an incident that causes the employer to lose trust in the employee does have a significant adverse impact. *See, e.g., Frank v. Heartland Auto. Servs., Inc.*, 743 N.W.2d 626, 630-31 (Minn. App. 2008) (holding that employee's fraudulent billing of customer is "sort of integrity-measuring conduct" that always has significant adverse impact on employer); *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (holding that cashier's single act of ringing up her

own order of food without paying for portion of it had significant adverse impact on employer because it could no longer entrust cashier with her job responsibilities).

The ULJ ruled that, although the incident was a single one of apparent theft, it was compounded by misleading or false statements that relator made afterwards, creating an atmosphere in which coworkers could no longer trust relator. The ULJ further found that relator's behavior violated the employer's policy against dishonesty of any nature, falsification of reports or records, mistreatment of a staff member, and any violation of law, justifying his discharge. In addition, the ULJ noted that relator acknowledged that it was a mistake for him to take the coffeemaker home without actually paying for it and a further mistake to lie about not having taken it. The ULJ did not credit relator's explanations in support of his claim that his conduct was unintentional. We defer to the ULJ's credibility determinations. Further, the ULJ's findings are supported by substantial evidence in the record and show that relator committed employment misconduct.

Finally, relator asserts that he was discharged based on age discrimination. The ULJ did not accept this theory, and nothing in the record indicates that it has merit.

**Affirmed.**