

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2116**

Jaime Mohs,
Relator,

vs.

Nahan Printing Inc.,
Respondent,

Department of Employment
and Economic Development,
Respondent.

**Filed September 1, 2009
Affirmed
Klaphake, Judge**

Department of Employment and Economic Development
File No. 21071176-3

Jaime Mohs, 3600 W. St. Germaine Street, Apt. 323, St. Cloud, MN 56301-1351 (pro se relator)

Nahan Printing Inc., 7600 Saukview Drive, St. Cloud, MN 56303 (respondent)

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

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

Relator Jaime Mohs challenges the decision of the unemployment law judge (ULJ) that she was ineligible to receive unemployment benefits because she had been discharged for employment misconduct for violating the break policies of her employer, respondent Nahan Printing, Inc. Relator also asserts that she did not receive a fair hearing. Because the record evidence supports the ULJ's findings that relator violated her employer's reasonable policies and because the record demonstrates that all the relevant facts were clearly and fully developed, we affirm.

DECISION

Relator argues that the ULJ erred because the decision was not supported by substantial evidence and the ULJ erred in applying the law. This court can modify or reverse the ULJ's decision under Minn. Stat. § 268.105, subd. 7(d) (Supp. 2007), for either of these reasons.

Whether an employee has engaged in employment misconduct is a mixed question of fact and law. *Skarhus v. Davanni's, Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). The ULJ makes a factual determination of the reasons for termination; we review this determination in a light most favorable to the decision, and we will not overturn the ULJ's factual findings if the evidence reasonably supports them. *Id.* The ULJ is the exclusive judge of credibility. *Id.* at 345. "When the credibility of an involved party or witness testifying in an evidentiary hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or

discrediting that testimony.” Minn. Stat. § 268.105, subd. 1(c) (Supp. 2007). We review the question of whether the acts so found constitute misconduct rendering an employee ineligible for benefits as one of law. *Skarhus*, 721 N.W.2d at 344.

An employee who is discharged from employment because of misconduct is ineligible for benefits. Minn. Stat. § 268.095, subd. 4 (Supp. 2007). “Employment misconduct” includes any “intentional, negligent, or indifferent conduct” that violates the employer’s reasonable standards or that shows a “substantial lack of concern for the employment.” Minn. Stat. § 268.095, subd. 6(a) (Supp. 2007). Violating a reasonable policy or rule of the employer constitutes employment misconduct. *See, e.g., Skarhus*, 721 N.W.2d at 344; *Sivertson v. Sims Sec., Inc.*, 390 N.W.2d 868, 871 (Minn. App. 1986), *review denied* (Minn. Aug. 20, 1986); *Montgomery v. F & M Marquette Nat’l Bank*, 384 N.W.2d 602, 604 (Minn. App. 1986), *review denied* (Minn. June 13, 1986); *Dean v. Allied Aviation Fueling, Co.*, 381 N.W.2d 80, 84 (Minn. App. 1986).

The ULJ found¹ that relator had been reprimanded in August 2007 for taking excessive breaks and for falsifying time records to show that she was working when she was on a break. In March 2008, relator began a new, eight-hour work schedule; according to the employer, relator was required to take a 30-minute unpaid lunch break and could take two five-minute breaks, one during the first half of her shift and another during the other half of her shift. Relator began working a 10-hour shift in June that

¹ The ULJ originally concluded that the employer violated the Fair Labor Standards Act, Minn. Stat. § 177.254, subd. 1 (2008), based on a finding that relator worked a 12-hour shift with only two five-minute breaks. On reconsideration and after a review of the record, the ULJ corrected her findings to reflect relator’s schedule at the time of discharge.

included a 30-minute unpaid lunch break and two five-minute breaks. Relator was told that she could take additional breaks, but she was required to notify her supervisor in advance by email. Because the employer's building was a secure facility, employees were required to use a security card that recorded the time of each entry or exit.

In July 2008, an employee in another division of the company complained that employees in relator's division were taking excessive breaks, so company management reviewed security records. The records, which were accurate because of use of the scanned security cards, showed that during a two-week period, relator took two lunch breaks longer than 30 minutes and 10 breaks more than those allotted to her. All of these facts found by the ULJ were supported by evidence in the record. The ULJ also made a finding that the security card transactions provided more credible evidence than relator's testimony.

Relator argues that her conduct was not different from others in her division, pointing to the testimony of her mother, who said that relator's breaks were comparable to everyone else's. The security records showed that two employees, relator and one other, took far more breaks than anyone else in her division. The other employee, who was dating relator, was fired on the same day for excessive break time. Relator also argues that it was customary for employees to take more breaks and that stepping outside was not necessarily a break. Even if this was so, an employee may not excuse his or her own conduct by referring to the misconduct of another employee. *See Dean*, 381 N.W.2d at 83.

It is well-settled that an employer has the right to expect an employee to abide by the employer's rules and policies. *See, e.g., Skarhus*, 721 N.W.2d at 344. The evidence here supports a conclusion that relator did not follow or was indifferent to the employer's rules regarding breaks. The ULJ's decision is supported by substantial evidence and is not an error of law. We therefore affirm.

Fair Hearing

Relator argues that she was denied a fair hearing because the ULJ refused to continue the hearing to allow her to get past time records and to take the testimony of two of her witnesses who were unable to testify on the day of the hearing.

Relator asked for additional time records to discover whether they showed she was violating the break policy between the August 2007 reprimand and the time of the records on which her dismissal was based. The ULJ refused to continue the hearing in order to get those records because there was enough information to show a violation of the break policy in the two weeks of records submitted.

When the ULJ asked if relator had additional witnesses, relator stated that she had released one witness because she was too busy, and that two others could not participate because of their busy work schedules. Relator stated that another proposed witness probably would be unable to verify certain statements that she made that her other witnesses were also unable to verify, such as whether there was an informal policy permitting additional breaks. Relator was unsure as to what testimony yet another witness would give, except that he might know what he was told about the break policy.

The ULJ is responsible for ensuring that all relevant facts are “clearly and fully developed.” Minn. Stat. § 268.105, subd. 1(b) (Supp. 2007). Based on the uncertain nature of this proposed testimony and the fact that it would repeat some of the testimony given by relator and the other employee, the ULJ did not err by refusing to continue the hearing.

Affirmed.