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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-62**

Narendra Dindiyal,

Relator,

vs.

Citizens Telecom Services Company LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed November 24, 2009
Affirmed
Crippen, Judge***

Department of Employment and Economic Development
File No. 21150507-3

Narendra T. Dindiyal, 8724 Iden Avenue South, Cottage Grove, MN 55016 (pro se relator)

Citizens Telecom Services Company LLC, C/O Talx UCM Services, P.O. Box 1160, Columbus, OH 43216 (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, Toussaint, Chief Judge; Bjorkman, Judge; and Crippen, Judge.

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

UNPUBLISHED OPINION

CRIPPEN, Judge

Relator Narendra Dindyal challenges the determination of the unemployment law judge that he was discharged for misconduct and is ineligible to receive benefits. Relator's act constituted misconduct, and we affirm.

FACTS

Relator worked as a sales agent coordinator for respondent Citizens Telecom Services (CTS) from September 2006 until August 2008. His duties included coordinating the presentation of CTS products and services to customers at events such as county fairs, sometimes by a third-party vendor hired by CTS and sometimes by himself. Relator was discharged after he refused to personally work at a county fair; although he normally coordinated work of vendors, he sometimes needed to attend fairs.

Relator sought unemployment benefits, saying both that there was no specific incident that caused his discharge and that he did not know he could be discharged for the incident. Respondent Department of Employment and Economic Development determined that no misconduct occurred, and relator was paid a total of \$4,670 in unemployment benefits; CTS opposed the determination. After a hearing, an unemployment law judge (ULJ) determined that relator was discharged for misconduct and had been overpaid \$4,670.

DECISION

In the unemployment context, misconduct includes violations of a standard of behavior that an employer has a right to reasonably expect or that shows a substantial

lack of concern for the employment. Minn. Stat. § 268.095, subd. 6(a) (2008). Refusing the reasonable request of an employer is misconduct. *Sandstrom v. Douglas Machine Corp.*, 372 N.W.2d 89, 91 (Minn. App. 1985). “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).

It is undisputed that relator refused his employer’s request to work at a county fair. For reasons evident in the record, the request was reasonable. Undisputed evidence shows that relator was told CTS needed him to work at the county fair on the morning of September 7, early in the afternoon of September 7, late in the afternoon of September 7, and on the morning of September 8, and that each time relator refused; he further refused when given multiple opportunities to comply with the request. In addition, the CTS supervisor testified that relator was warned that his refusal to work could result in his termination, and relator testified that he was aware that he could be fired for noncompliance. It was also undisputed that CTS offered both to reimburse relator for the cost of a boat he had rented for the weekend and to give him two days off in either the week preceding or the week following the county fair.

Finally, relator’s supervisor testified that, as of summer 2008, third-party vendors were paid for working at events in proportion to how successfully they met a goal set by CTS for the event, that vendors could agree or decline to work at an event, and that a particular vendor had declined to work at the fair at which relator was asked to work. Relator testified that the vendor was willing to work that weekend but that the supervisor said the vendor would be too expensive. This conflict as to the availability of a vendor

can be resolved in light of this testimony: although a vendor may have been available to work, the vendor was not willing to work for what CTS would pay, and therefore declined. Because relator had the job of ensuring that CTS reached customers at county fairs, he was not entitled to question the reasonableness of CTS's decisions on the compensation it was willing to pay to a vendor.

CTS had a right to reasonably expect that relator would work on a weekend when he was told his employer needed him to work and offered compensatory time and reimbursement of an expense. And relator showed a substantial lack of concern for his employment when he refused to work despite being told that refusal could lead to his termination. *See* Minn. Stat. § 268.095, subd. 6(a) (misconduct includes conduct that violates standard of behavior an employer has a right to reasonably expect or shows a substantial lack of concern for the employment).

Relator argues for the first time on appeal that CTS treated him unfairly because no other employees were discharged for not working at the county fair. This court does not generally address arguments not presented to and considered by a previous decisionmaker. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). And in any event, CTS's alleged treatment of other employees is irrelevant to the issue of whether relator's refusal to work was misconduct within the meaning of Minn. Stat. § 268.095, subd. 6(a).

Finally, relator told the ULJ he believed he was discharged because, four months earlier, he had filed an EEOC complaint alleging discriminatory treatment by one of CTS's vice-presidents. Because relator does not raise this argument on appeal, it is waived. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982). Moreover, when the

ULJ asked relator why the EEOC complaint was not mentioned in his application for benefits, relator said he did not know, and he offered no evidence connecting his discharge to the EEOC complaint four months earlier.

CTS's request that relator work at the county fair was reasonable; relator's refusal to work as requested was misconduct, for which he was discharged. The ULJ correctly concluded that relator is ineligible to receive unemployment benefits.

Affirmed.