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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-801**

Karin Mahlich,
Relator,

vs.

Reach-Up Incorporated,
Respondent,

Department of Employment and
Economic Development,
Respondent.

**Filed January 26, 2010
Affirmed
Hudson, Judge**

Department of Employment and
Economic Development
File No. 21476616-3

Karin E. Mahlich (pro se relator)

Reach-Up Incorporated, St. Cloud, Minnesota (respondent)

Lee B. Nelson, Amy R. Lawler, St. Paul, Minnesota (for respondent Department of
Employment and Economic Development)

Considered and decided by Toussaint, Chief Judge; Hudson, Judge; and Huspeni,
Judge.*

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

UNPUBLISHED OPINION

HUDSON, Judge

Relator Karin Mahlich challenges the finding of the unemployment law judge (ULJ) that she committed acts constituting employment misconduct and is therefore ineligible for unemployment benefits. Because the evidence substantially sustains that finding, we affirm.

FACTS

Relator worked for respondent Reach-Up Incorporated as a teacher in a preschool program. Her supervisor testified that, in October 2008, an assistant in relator's classroom reported that relator treated one child roughly, kept two or three children sitting in time out for an hour, and threw an empty box at a group of children. Following a conference with her supervisor, relator signed a "Documentation of Disciplinary Action" that stated: "If *any* incident of this nature happens again, [relator] will be terminated from her position" (Emphasis in original.) The supervisor testified further that, in November 2008, assistants in relator's classroom reported that relator had on two occasions refused to let them promptly assist a child who had wet her pants, requiring the child to remain in the classroom for about 20 minutes before being changed.

Relator was discharged for her treatment of children. She applied for unemployment benefits and was determined to be ineligible. She appealed. Following a telephone hearing, the ULJ found that relator had committed misconduct, for which she was discharged, and concluded that she was ineligible for benefits. Relator challenges the findings as to her treatment of children.

DECISION

“Whether the employee committed an act alleged to be employment misconduct is a fact question[.]” *Risk v. Eastside Beverage*, 664 N.W.2d 16, 19-20 (Minn. App. 2003). This court will not disturb a ULJ’s findings of fact if evidence substantially sustains them. *Peterson v. Nw. Airlines Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008).

The ULJ’s finding that relator “engaged in a pattern of inappropriate discipline with the children in her classroom” is substantially sustained by the evidence, including reports from the classroom assistants and the testimony of relator’s supervisor and respondent’s human resources coordinator (HRC). The ULJ noted that the supervisor and HRC “corroborate each other[’s testimony]” and “are more persuasive witnesses than [relator].” Credibility determinations are within the ULJ’s discretion. *Peterson*, 753 N.W.2d at 774. The ULJ specifically found that relator’s testimony as to why she refused to let classroom assistants attend to the child who needed to be changed was “not reasonable and not believable.”

Relator objects that the testimony of the supervisor and HRC was hearsay, but “the hearsay restrictions in the rules of evidence do not apply to unemployment-benefits hearings.” *Lamah v. Doherty Employment Group, Inc.*, 737 N.W.2d 595, 603 (Minn. App. 2007) (citing Minn. R. 3310.2922 (2005)). The testimony of the supervisor and

HRC constitutes evidence that substantially supports the ULJ's finding that relator engaged in inappropriate discipline.¹

Affirmed.

¹ Relator's unsupported claim that she was discharged for political reasons rather than for misconduct is waived. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (holding that issues not briefed on appeal are waived).