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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1319**

Michael Larson,
Relator,

vs.

Gary Brummer,
Respondent,
Department of Employment and Economic Development,
Respondent.

**Filed March 30, 2010
Affirmed
Stoneburner, Judge**

Department of Employment and Economic Development
File No. 213654254

Michael F. Larson, White Bear Lake, Minnesota (pro se relator)

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

Considered and decided by Ross, Presiding Judge; Stoneburner, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Relator Michael Larson challenges the determination of an unemployment law judge (ULJ) that relator's employment as a property manager of an apartment/townhouse complex was terminated for employment misconduct, making him ineligible for unemployment benefits. We affirm.

DECISION

An employee discharged for misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008). “Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether an employee committed the alleged act is a fact question, and this court gives deference to the findings of the ULJ when those findings are substantially supported by the record. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006); *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). But whether the employee's conduct constitutes disqualifying misconduct is subject to de novo review by the appellate court. *Schmidgall*, 644 N.W.2d at 804.

In this case, the ULJ noted that much of the evidence presented consisted of hearsay from employer Gary Brummer about complaints from various tenants of the rental complex he owned (Waters Edge),¹ alleging that Larson, while employed as

¹ The rental property is referred to as “Edgewater” by Larson and the ULJ, but is referred to as “Waters Edge Apartments” or “Waters Edge Town Homes” in other documents in

property manager, had entered apartments without invitation, peered into windows, made rude comments, and touched female residents without invitation. The ULJ stated that the hearsay reports had “limited credibility,” but found that the testimony of witnesses based on their personal experiences confirmed a concern among tenants about Larson’s inappropriate behavior that Larson knew, or should have known, would be offensive to tenants and unacceptable to his employer.

Bonnie O’Neill, who, at Brummer’s request, posed as a prospective tenant of Waters Edge to investigate complaints that Brummer received, testified that when she visited Waters Edge, pretending to be interested in renting, Larson made derogatory statements about Brummer, showed her a filthy apartment, and repeatedly touched her while he talked to her. O’Neill testified that when Larson learned that she worked as a property manager, he asked her about possible employment opportunities elsewhere because he was dissatisfied at Waters Edge.

A Waters Edge tenant testified that Larson came into her apartment without knocking and without identifying himself and that, when she asked who he was, he asserted that he was the manager with authority to be there. Another tenant testified that on several occasions, Larson knocked on her apartment door after her husband had left for the day and that he touched her on the shoulder when he talked to her. She testified that he stopped touching her when she once asked him to, but on the next occasion

the file and in the brief filed by the Minnesota Department of Employment and Economic Development (DEED).

touched her again. She also testified that Larson failed to give her husband a receipt for rent paid in cash.

Larson denied all of the allegations against him and asserted that Brummer and all of the other witnesses were lying. Larson offered text messages to him from the girlfriend of one of the testifying tenants to refute testimony that this tenant had gone to Florida out of fear of Larson. Larson denied that he entered an apartment without permission. He testified that he had knocked before entering and had been “waved” in by a child who was watching a loud television.

Larson testified at length about his disagreements with Brummer over management practices. Larson testified that Brummer repeatedly asked him to engage in practices that Larson considered illegal and that Brummer stated that he did not want to spend any money on the units. Larson stated that his only concern was the welfare of the tenants, while Brummer’s only concern was for money. Larson submitted letters from tenants who found him to have been helpful with maintenance and other issues.

The ULJ explicitly credited the testimony of Brummer, O’Neill, and the two tenants regarding Larson’s conduct and implicitly found Larson’s denials not credible. The ULJ concluded that Larson repeatedly engaged in conduct which he knew or should have known would be offensive to tenants and unacceptable to his employer, constituting disqualifying employment misconduct.

On appeal, Larson continues to attack the credibility of Brummer and his witnesses. But this court defers to the ULJ’s assessment of credibility. *Skarhus*, 721

N.W.2d at 344. And testimony found credible supports the ULJ's finding that Larson engaged in conduct that was offensive to tenants.

Employment misconduct means "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). We conclude that Larson's behavior of unnecessarily touching female tenants, making derogatory statements about his employer to a prospective tenant, and entering an occupied apartment without the consent of a tenant is behavior that violates the standards that the employer has a right to expect, constituting employment misconduct.

Affirmed.