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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1665**

Steven Skaret,  
Relator,

vs.

Diversified Distributors Inc.,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed July 20, 2010  
Affirmed  
Ross, Judge**

Department of Employment and Economic Development  
File No. 22313146-3

Steven D. Skaret, St. Louis Park, Minnesota (pro se relator)

Diversified Distributors, Inc., Burnsville, Minnesota (respondent)

Lee B. Nelson, Britt K. Lindsay-Waterman, Department of Employment and Economic  
Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Kalitowski, Presiding Judge; Wright, Judge; and Ross,  
Judge.

## **UNPUBLISHED OPINION**

**ROSS, Judge**

Relator Steven Skaret appeals from an unemployment law judge's determination that he is ineligible for unemployment benefits. The unemployment law judge held that Skaret is ineligible because he was discharged for employment misconduct. Because the record contains substantial evidence that Skaret committed employment misconduct, we affirm.

### **FACTS**

Steven Skaret began working for Diversified Distributors Inc. (Diversified) as a builder salesperson in November 2004. Skaret's job duties included measuring for and ordering home improvement products to be installed for Diversified's projects. He was also required to obtain signature authorization from the general contractor for Diversified's projects before making order changes and signature authorization from Diversified's president before reordering to correct mistakes.

During his employment at Diversified, Skaret occasionally failed to obtain prior authorization for orders. He also failed to include products in bids submitted on behalf of Diversified, incorrectly measured for products, or priced the wrong products. On multiple occasions, Skaret's errors resulted in additional costs for Diversified. Diversified's president repeatedly reminded Skaret to obtain prior authorization for his orders.

In early 2009, Skaret erroneously measured cabinets for a project and ordered them without obtaining the general contractor's authorization. Diversified discharged

Skaret on March 31, 2009, explaining that Skaret's measuring failures, failure to obtain appropriate authorizations, unpreparedness for meetings, and failure to communicate with customers were the reasons for the termination.

Skaret applied to the Department of Employment and Economic Development (DEED) for unemployment benefits. DEED initially determined that Skaret was eligible for benefits. Diversified appealed. Skaret and Diversified's president, Joshua Mortensen, both testified at a hearing before an unemployment law judge (ULJ), who credited Mortensen's testimony that Skaret had failed to follow Diversified's authorization procedure. The ULJ determined that Skaret's failure to follow company procedure amounted to employment misconduct, making Skaret ineligible for unemployment benefits. Skaret sought reconsideration, and the ULJ affirmed. This certiorari appeal follows.

## **DECISION**

Skaret challenges the ULJ's misconduct determination. An employee who is discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2008). Employment misconduct is "any intentional, negligent, or indifferent conduct, on the job or off the job that displays clearly: (1) a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee; or (2) a substantial lack of concern for the employment." *Id.*, subd. 6(a) (Supp. 2009). Employment misconduct is not inefficiency or inadvertence, simple unsatisfactory conduct, poor performance because of inability or incapacity, or good-faith errors in judgment. *Id.*, subd. 6(b) (Supp. 2009).

Whether an employee engaged in employment misconduct is a mixed question of law and fact. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether an employee committed a particular act is a question of fact. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). A ULJ's factual findings are reviewed in the light most favorable to the decision and will not be disturbed on appeal if there is evidence that reasonably tends to sustain them. *Schmidgall*, 644 N.W.2d at 804. But whether a particular act constitutes employment misconduct is a question of law, which we review de novo. *Id.*

The ULJ determined that Skaret was discharged for employment misconduct because Skaret “intentionally failed to comply” with a known policy requiring authorization from a general contractor or Mortensen before ordering or reordering product. This factual and legal determination is supported by the record and consistent with relevant law.

Mortensen testified that a primary reason for discharging Skaret was his repeated failure to obtain authorization for product orders. He explained that company policy required a general contractor's signature authorization for product orders and his own signature authorization for any reorders placed to correct faulty orders. He described multiple instances when Skaret had failed to obtain the required authorization from a general contractor before incurring costs. He also described an incident in which Skaret's errors in measurement required reordering and explained that Skaret violated company policy by failing to obtain Mortensen's authorization before reordering. Although Skaret challenges the accuracy of Mortensen's testimony, the ULJ explicitly credited Mortensen

over Skaret and listed reasons, and we defer to that credibility determination. *See Skarhus*, 721 N.W.2d at 344 (stating that this court defers to ULJ’s credibility determinations). And Skaret corroborated significant portions of Mortensen’s testimony that Skaret failed to obtain required authorization for orders or reorders. Although Skaret disputes that he was warned about his behavior, Mortensen explained that he met with Skaret and repeatedly admonished him to remedy the policy violations. The record supports the ULJ’s finding that Skaret intentionally violated company policy requiring signed authorizations before placing orders.

An employee’s knowing violation of an employer’s reasonable policy is employment misconduct. *Schmidgall*, 644 N.W.2d at 806. This is particularly true when there are multiple violations of the same rule involving warnings or discipline. *Id.* at 806–07. The ULJ properly determined that Mortensen’s oral admonitions were sufficient warning to let Skaret know “that his job might be in jeopardy should he continue to fail to follow proper procedure.”

Skaret argues that there were very few instances of his improper documentation and that his policy violations should not be considered misconduct because he bore the financial consequences of his errors through deductions from his commissions. But the record indicates multiple violations, and the deductions from his commission do not undermine the ULJ’s finding that Skaret’s conduct was insubordinate and displayed a serious disregard of Diversified’s interest.

The ULJ did not err by concluding that Skaret committed employment misconduct.

**Affirmed.**