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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2103**

Geneva Sondag,
Relator,

vs.

Kraft Foods Global, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed September 19, 2011
Affirmed
Peterson, Judge**

Department of Employment and Economic Development
File No. 25553146-3

Geneva F. Sondag, Hanska, Minnesota (pro se relator)

Kraft Foods Global, Inc., San Antonio, Texas (respondent employer)

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

Considered and decided by Schellhas, Presiding Judge; Peterson, Judge; and
Minge, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

Pro se relator challenges the decision by an unemployment-law judge (ULJ) that she is ineligible for all unemployment benefits because she was discharged because of employment misconduct. We affirm.

FACTS

Relator Geneva Sondag worked as a packaging specialist for respondent Kraft Foods Global, Inc. from November 6, 1989, until June 20, 2010. Relator's disciplinary record began with three failures to perform hourly weight checks on October 6, 2008, April 28, 2009, and May 6, 2009, which culminated with a written warning for these infractions on May 7, 2009. On November 30 and December 14, 2009, relator entered an incorrect product code into the weight-control program in the computer system, which resulted in a product hold for the entire shift. As a result, relator received a "Final Written Warning" on December 16, 2009.

On May 10, 2010, a dispute arose when one of relator's coworkers stopped to put hand lotion on while working at the production line. When the product began to back up, relator grabbed her coworker's wrist and lifted her arm so that relator could push product past the coworker. A disputed amount of force was used, ranging from a grab and lift to slamming the arm onto the table. Because of this incident, Kraft suspended relator, and the parties entered into a "Condition of Continued Employment" agreement.

The final incident, which resulted in relator's discharge from employment, occurred in June 2010 when relator's job was to use scissors to open packages of crackers

for other workers who would insert the crackers into a machine. One of relator's coworkers remarked that she was surprised that relator was allowed near sharp objects and that relator should stay away from her. Following this remark, relator opened packages for only one coworker. Relator testified that when she tried to return to help the coworker who made the remark, the coworker used her fingers to make a cross sign, indicating that relator should stay away. On June 17, Kraft suspended relator pending an investigation of the incident, and, on June 20, Kraft discharged relator for unacceptable behavior and for violating the "Condition of Continued Employment" agreement.

Respondent Minnesota Department of Employment and Economic Development initially determined that relator was eligible for unemployment benefits because she was discharged as a result of unintentional unsatisfactory work performance that was not caused by negligence or indifference and, therefore, no employment misconduct occurred. Kraft appealed the eligibility determination, and, following an evidentiary hearing, a ULJ determined that relator is ineligible for benefits because she was discharged from employment because of employment misconduct. Relator requested reconsideration, and the ULJ affirmed the determination. This certiorari appeal followed.

DECISION

When reviewing the decision of a ULJ, this court

may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:

- (1) in violation of constitutional provisions;

- (2) in excess of the statutory authority or jurisdiction of the department;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.

Minn. Stat. § 268.105, subd. 7(d) (2010).

An employee who is discharged from employment because of employment misconduct is ineligible for all 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) (2010). “Conduct that was a consequence of the applicant’s inefficiency or inadvertence; . . . simple unsatisfactory conduct; . . . [and] conduct an average reasonable employee would have engaged in under the circumstances” are not employment misconduct. *Id.*, subd. 6(b)(2)-(4).

Whether an employee committed employment misconduct is a mixed question of fact and law. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Whether the employee committed a particular act is a question of fact. *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997). This court views the ULJ’s factual findings in the light most favorable to the decision and gives deference to the credibility determinations made by the ULJ. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). This court will not disturb the ULJ’s factual findings when the

evidence substantially sustains them. Minn. Stat. § 268.105, subd. 7(d)(5). But whether an act committed by an employee constitutes employment misconduct is a question of law, which we review de novo. *Scheunemann*, 562 N.W.2d at 34.

The ULJ found that relator had been disciplined for the prior weight-check, product-code, and physical-contact incidents. These incidents are basically undisputed, and substantial evidence sustains these findings. The ULJ also found that relator was assigned to open packages of crackers for three production lines and, after a statement by a coworker, relator became agitated and refused to open packages for two of the three lines. The ULJ found that this caused additional work for other employees and that relator was discharged because of the above incidents. These findings are also supported by substantial evidence. There was conflicting testimony about the number of production lines affected, but the finding that relator's actions caused additional work for coworkers is correct regardless of how many coworkers were affected.

In light of these findings, this court determines de novo whether relator's actions constituted employment misconduct. In the physical-contact incident and the cracker-packaging incident, relator's actions were intentional conduct that seriously violated the standards of behavior the employer had a right to reasonably expect of relator. Kraft had informed relator about its harassment policy, and relator knew that physically contacting the coworker was unacceptable behavior. Relator admitted that what she did was wrong. And it was reasonable for Kraft to expect that relator would perform her job duties as instructed rather than not performing her duties in response to a comment by a coworker. Relator's actions meet the statutory definition of employment misconduct, and the ULJ

did not err by concluding that relator is ineligible for all unemployment benefits because she was discharged from employment because of employment misconduct.

Affirmed.