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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1741**

Ardell Tesmer,
Relator,

vs.

Wal-Mart Associates, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed May 15, 2017
Affirmed
Schellhas, Judge**

Department of Employment and Economic Development
File No. 34581783-4

Ardell W. Tesmer, Plainview, Minnesota (pro se relator)

Wal-Mart Associates, Inc., Rochester, Minnesota (respondent employer)

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

Considered and decided by Bratvold, Presiding Judge; Schellhas, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Relator challenges an unemployment-law judge's decision that he is ineligible for unemployment benefits because he was discharged for employment misconduct. We affirm.

FACTS

Relator Ardell Tesmer worked in the produce department of one of respondent Wal-Mart Associates Inc.'s stores from June 2001 until March 2016. Wal-Mart expects its employees to work when scheduled and to not exceed their scheduled shifts without supervisor approval. Tesmer was aware of this expectation but exceeded his scheduled shifts without approval on numerous occasions in 2015, including once in January, three times in May, twice in June, and once in July. These violations resulted in Tesmer leaving subsequent shifts early to make up for working in excess of his earlier shifts and prompted Wal-Mart to issue Tesmer written warnings on three separate occasions. Tesmer nevertheless again exceeded his scheduled shift on March 5, 2016.

On March 11, 2016, Wal-Mart discharged Tesmer for failing to comply with the scheduling policy. Tesmer applied for unemployment benefits with respondent Minnesota Department of Employment and Economic Development, and the department determined that Tesmer was ineligible for benefits. Tesmer appealed the determination, and an unemployment-law judge (ULJ) concluded that Tesmer was discharged for employment misconduct because he worked past his scheduled shifts without supervisor approval. The ULJ affirmed her decision on reconsideration.

This appeal by writ of certiorari follows.

DECISION

When reviewing a ULJ's decision, we may affirm, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the relator have been prejudiced because, among other things, the decision is unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2016). "Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law." *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011) (quotation omitted). "Whether the employee committed a particular act is a question of fact." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). "But whether the act committed by the employee constitutes employment misconduct is a question of law, which we review de novo." *Id.* "We view the ULJ's factual findings in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ." *Id.* (citations omitted). This court "will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Id.*

A person who is discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4 (2016). "Employment misconduct means any intentional, negligent, or indifferent conduct . . . 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." Minn. Stat. § 268.095, subd. 6(a) (2016). "As a general rule, refusing to abide by an employer's

reasonable policies and requests amounts to disqualifying misconduct.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

We conclude that substantial evidence supports the ULJ’s finding that Tesmer violated Wal-Mart’s scheduling policy and that the ULJ did not err by concluding that Tesmer committed employment misconduct. The record shows that Wal-Mart warned Tesmer about working beyond his scheduled shift without prior approval from his supervisor. In fact, Tesmer was specifically told that even if work was not complete by the end of his shift he should “just go home.” Despite three written warnings, Tesmer continued to work beyond his scheduled shifts. Because Tesmer repeatedly violated Wal-Mart’s reasonable scheduling policy, the ULJ did not err by concluding that Tesmer was discharged for employment misconduct and therefore ineligible for unemployment benefits. *See id.* at 806–07 (“[A]n employee’s decision to violate knowingly a reasonable policy of the employer is misconduct. This is particularly true when there are multiple violations of the same rule involving warnings or progressive discipline.” (citation omitted)).

Affirmed.