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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0767**

Mustafa Elkhatib,
Relator,

vs.

E. A. Sween Company,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed January 8, 2018
Affirmed
Schellhas, Judge**

Department of Employment and Economic Development
File No. 35274368-3

Mustafa M. Elkhatib, Shakopee, Minnesota (pro se relator)¹

Shannon M. McDonough, Andrew T. James, Fafinski Mark & Johnson, P.A., Eden Prairie,
Minnesota (for respondent E.A. Sween Company)

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

¹ Some documents from the parties, and the ULJ spell “Elkhatib” as “El Khatib.” The caption on appeal must match the caption in the ULJ’s decision. See Minn. R. Civ. App. P. 143.01. This opinion uses “Elkhatib,” which is used in the ULJ’s caption and also matches relator’s signature in his brief.

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that he committed employment misconduct and therefore is ineligible for unemployment benefits. We affirm.

FACTS

Relator Mustafa Elkhatib began employment at respondent E.A. Sween Company in July 2015 and suffered a work-related injury in April 2016. To accommodate Elkhatib's injury, Sween found and paid for Elkhatib's employment at Arc Value Village Thrift Store starting in November 2016. After consulting with Arc, Sween terminated Elkhatib's employment on December 19, 2016, for employment misconduct. Elkhatib applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) determined that Elkhatib is ineligible for unemployment benefits because Sween discharged him for misconduct. Elkhatib appealed the determination.

A ULJ conducted a telephonic hearing, during which Sween's representative and Elkhatib testified. The ULJ found that "El Khatib submitted a timesheet . . . showing that he worked four hours . . . then left before working the four hours. . . . He did not clock out. He did not report the early departure on his own." The ULJ concluded that Elkhatib's conduct "displayed clearly a serious violation of the standards of behavior that Sween had

the right to reasonably expect of El Khatib,” and determined that Elkhatib’s actions rose to the level of employment misconduct. The ULJ therefore decided that Elkhatib is ineligible for unemployment benefits. The ULJ later affirmed the decision on reconsideration.

This certiorari appeal follows.

D E C I S I O N

This court may affirm, remand, reverse, or modify the ULJ’s decision if Elkhatib’s substantial rights may have been prejudiced because the findings, inferences, conclusion, or decision are unsupported by substantial evidence in view of the entire record. Minn. Stat. § 268.105, subd. 7(d)(5) (Supp. 2017). An employee discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2016). “Employment misconduct means 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. 2017). The statutory definition of “employment misconduct” is exclusive. *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 458 (Minn. 2016).

Whether an employee committed employment misconduct is a mixed question of law and fact. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). “Whether a particular act constitutes disqualifying conduct is a question of law we review de novo.” *Wilson*, 888 N.W.2d at 460. An appellate court “will narrowly construe the disqualification provisions of the statute in light of their remedial nature, as well as the policy that unemployment compensation is paid only to those persons unemployed through no fault

of their own.” *Stagg*, 796 N.W.2d at 315 (quotation omitted). “In unemployment benefit cases, the appellate court is to review the ULJ’s factual findings in the light most favorable to the decision and should not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them. *Id.*

“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). Here, the ULJ found that Elkhatib knew Arc’s policies for absences and timesheet submission. Elkhatib admits that he agreed to accurately report his hours by signing the employee-acknowledgement form and that he left work early. He has not denied that he falsified his timesheet.

The ULJ found that Elkhatib’s early departure from work without permission, his failure to disclose his early departure, and his falsified timesheet constituted misconduct. Elkhatib argues that he never intended to falsify his timesheet, that he both followed proper procedure and was never made aware of the appropriate procedures to follow, that he did not alter later-submitted timesheets, and that he left work early due to pain that led to hospital admission. The ULJ found Sween’s testimony to be more credible than Elkhatib’s testimony because Arc had no reason to “shed itself of someone who could provide a service to Arc Value at no cost,” and the ULJ found Elkhatib’s explanation of events not credible. We defer to the ULJ’s credibility determination. See *Brisson v. City of Hewitt*, 789 N.W.2d 694, 696 (Minn. App. 2010).

We conclude that substantial evidence supports the ULJ’s findings that Sween discharged Elkhatib because he left work early without permission, failed to report his

absence, and falsified his timesheet. We will not disturb these findings. Elkhatib's decision to leave work early without informing a supervisor and submitting a timesheet reflecting hours that he did not work violated Arc's policies and constituted misconduct. *See Ruzynski v. Cub Foods, Inc.*, 378 N.W.2d 660, 663 (Minn. App. 1985) (affirming denial of unemployment benefits where employee falsified his timesheet and failed to obtain approval to leave work early, violating his employer's policies); *see also Hanson v. Crestliner Inc.*, 772 N.W.2d 539, 543 (Minn. App. 2009) ("Generally, a single absence without permission from the employer may amount to misconduct.").

Substantial record evidence shows that Elkhatib intentionally committed a serious violation of the standards of behavior that Arc and Sween had the right to reasonably expect of him. The ULJ therefore did not err by deciding that Sween discharged Elkhatib for employment misconduct.

Affirmed.