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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A17-0772**

Heidi Kardell,  
Relator,

vs.

Institute of Facial Surgery St. Paul,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed November 27, 2017  
Affirmed  
Bjorkman, Judge**

Department of Employment and Economic Development  
File No. 35214191-3

Heidi Kardell, Mounds View, Minnesota (pro se relator)

Dennis B. Johnson, Chestnut Cambronne PA, Minneapolis, Minnesota (for respondent employer)

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

Considered and decided by Bjorkman, Presiding Judge; Halbrooks, Judge; and Reyes, Judge.

## **UNPUBLISHED OPINION**

**BJORKMAN**, Judge

Relator challenges the determination of an unemployment-law judge (ULJ) that she is ineligible for unemployment benefits because she was discharged for employment misconduct. We affirm.

### **FACTS**

Relator Heidi Kardell began working as an office manager for respondent Institute of Facial Surgery St. Paul (the employer) in September 2015. She was routinely late for work, sometimes because she was running errands for the employer but often for personal reasons. The employer's owner spoke to her about the tardiness, but it persisted. In late May 2016, Kardell began modifying her time reports, which she had access to as the office manager. Thereafter, she modified her time reports to reflect on-time arrival on nearly a daily basis. After the accounts manager confirmed discrepancies between Kardell's arrival times and the recorded start times on three specific dates, Kardell was discharged on December 19, 2016.

Kardell applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) initially determined that Kardell was ineligible for benefits because she committed aggravated employment misconduct by falsifying her time reports. Kardell appealed. After a hearing, a ULJ determined that Kardell committed employment misconduct, but not aggravated employment misconduct, by repeated tardiness and falsification of time reports, making her ineligible for

unemployment benefits. Kardell requested reconsideration, and the ULJ affirmed. Kardell appeals by writ of certiorari.

## D E C I S I O N

An employee who is discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2016). 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.” Minn. Stat. § 268.095, subd. 6(a) (Supp. 2017).

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 an employee committed a particular act is an issue of fact. *Id.* We view a ULJ’s factual findings in the light most favorable to the decision, deferring to the ULJ’s credibility determinations, and will not disturb those findings if they are supported by substantial evidence. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). Whether an employee’s act constitutes employment misconduct is a legal question, which we review de novo. *Stagg*, 796 N.W.2d at 315.

Kardell does not challenge the ULJ’s findings that she regularly arrived at the office after her scheduled start time and modified her time reports. But she disputes the findings that she lacked a legitimate business reason for being late and that the modifications she made to her time reports were false. Kardell asserts that she appropriately modified her time reports to account for time she was expected to work outside of the office. The record

indicates otherwise. While it is undisputed that Kardell performed some work outside the office, which may have justified occasional late arrivals and related time-report modifications, the accounts manager testified, and Kardell acknowledged, that she did not have outside assignments every day. Kardell nonetheless modified her time reports on nearly a daily basis from the end of May until she was discharged in December. And the accounts manager personally observed Kardell's late arrival on three occasions when Kardell reported regular work hours. This evidence amply supports the ULJ's findings that Kardell was repeatedly tardy and falsified her time reports.

An employee who disregards an employer's tardiness or absence policies violates the standards of behavior an employer can reasonably expect from an employee, and, therefore, commits employment misconduct. *Id.* at 317. Falsifying a time report also is employment misconduct. *Ruzynski v. Cub Foods, Inc.*, 378 N.W.2d 660, 663 (Minn. App. 1985). Kardell does not argue otherwise. The ULJ correctly concluded that Kardell committed employment misconduct by disregarding the employer's directives regarding her arrival time and by falsifying her time reports.

This employment misconduct disqualifies Kardell for unemployment benefits if it was the basis for her discharge. *See* Minn. Stat. § 268.095, subd. 4(1) (providing that employee is ineligible for benefits if "discharged *because of* employment misconduct" (emphasis added)). Kardell contends that her medical problems and "personal issues" between herself and the owner led to her discharge. At the hearing, she testified that she believes her discharge was due "at least in part" to her "standing up to [the owner] about some issues including prescription writing," but she did not offer further explanation. By

contrast, the employer's owner testified, consistent with the evidence of Kardell's conduct, that he discharged Kardell because "[s]he was habitually late and she just was not here at the office when I needed her," that she "was oftentimes not present," and "she was falsifying her timesheets." The ULJ accepted that reason, and it is not this court's role to reweigh the evidence. On this record, we discern no error in the ULJ's finding that Kardell was discharged because of employment misconduct.

In sum, substantial evidence supports the ULJ's finding that Kardell was discharged because she disregarded the employer's tardiness policy and falsified her time reports. These actions amount to employment misconduct and make her ineligible to receive unemployment benefits.

**Affirmed.**