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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0900**

Katerina Steiger,
Relator,

vs.

Cub Foods,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed January 7, 2019
Affirmed
Hooten, Judge**

Department of Employment and Economic Development
File No. 36325928-4

Katerina Steiger, St. Paul, Minnesota (pro se relator)

Cub Foods, Eden Prairie, Minnesota (respondent)

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

Considered and decided by Rodenberg, Presiding Judge; Hooten, Judge; and
Stauber, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HOOTEN, Judge

Relator appeals from an unemployment law judge's determination that relator was terminated from her job for employment misconduct, rendering her ineligible for unemployment benefits. We affirm.

FACTS

Relator Katerina Steiger worked for Cub Foods as a part-time cashier from 2015 to early 2018, when she was accused by her employer of stealing two cans of soda as she was leaving work. Relator took the two cans from a broken 12-pack container that was set aside at the store. Cub has a policy of firing employees for any amount of theft regardless of the dollar value. Relator admits that she took the soda without paying for it. Following an investigation, Cub terminated relator's employment in February of 2018.

Relator applied for unemployment benefits. Cub, through a representative, advised the Minnesota Department of Employment and Economic Development (DEED) by letter that relator had been terminated for violating a reasonable and known policy. DEED determined that relator was ineligible for unemployment benefits because she was terminated for employment misconduct. Relator appealed.

A telephone hearing with the unemployment law judge (ULJ) took place in early April of 2018. The ULJ issued findings of fact and a decision a few days later, finding that relator was discharged for employment misconduct and is thus ineligible for unemployment benefits. Several days later relator filed a request for reconsideration, and

the ULJ again determined that relator was ineligible for unemployment benefits. This certiorari appeal followed.

DECISION

Relator makes three main arguments as to why she should be entitled to unemployment benefits. All three arguments fail.

An employee discharged for employment misconduct is ineligible to receive unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2018). “The question of whether an employee engaged in conduct that disqualifies him or her from unemployment benefits is a mixed question of fact and law.” *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016). 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). We review factual findings “in the light most favorable to the decision and will not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them.” *Wilson*, 888 N.W.2d at 460 (quotations omitted). “Whether a particular act constitutes disqualifying conduct is a question of law we review de novo.” *Id.* “Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus*, 721 N.W.2d at 345. We may only “reverse or modify the [ULJ’s] decision if the substantial rights of the [relator] may have been prejudiced because the findings, inferences, conclusion, or decision” violate constitutional provisions, exceed respondent department’s statutory authority, were made pursuant to an unlawful procedure, are based on an error of law, are unsupported by the record evidence, or are arbitrary or capricious. Minn. Stat. § 268.105, subd. 7(d) (2018).

Relator's first argument is that she was actually fired because some of her co-workers disliked her, and that the cans of soda that she took had no value and were going to be thrown away had she not taken them. We interpret this argument as a challenge to the ULJ's factual findings that relator "was discharged for stealing two cans" of soda. And there is evidence in the record that tends to sustain this finding.

The store manager testified that relator was discharged "strictly based off this, the theft," and that soda from broken containers, such as that taken by relator, get sent back to the vendor and are not thrown out. The store manager also testified that Cub has a policy of discharging employees for any theft "no matter how slight." The ULJ's finding that relator was discharged for theft is implicitly a determination that relator's claims about why she was fired were not credible, while the store manager was credible. And because "[c]redibility determinations are the exclusive province of the ULJ," relator's argument necessarily fails. *Skarhus*, 721 N.W.2d at 345. We therefore affirm the ULJ's determination that relator was discharged for the theft.

We next consider de novo whether relator's conduct constitutes employment misconduct. *Wilson*, 888 N.W.2d at 460. 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) (2018).

Relator's second argument is that her theft does not constitute employment misconduct because the value of the soda was so trivial that it was not a "serious violation

of the standards of behavior the employer has the right to reasonably expect.” *Id.* But we have held that theft from an employer by an employee constitutes employment misconduct even when there is minimal loss to the employer. *Skarhus*, 721 N.W.2d at 344. In *Skarhus*, we did not “focus solely on the minimal value of the stolen food,” recognizing that such an analysis would require extensive fact-finding and “disregard[s] the type of adverse impact that is not readily quantifiable.” *Id.* A cashier’s primary responsibility is facilitating the exchange of customers’ money for the employers’ product. Following an intentional theft of product, the employer may no longer be able to trust the employee to handle money or inventory. *See id.* Here, it is undisputed that relator was employed as a cashier and took two cans of soda without paying for them. That the value of the stolen items was minimal does not affect our analysis. We therefore hold that relator’s theft constituted employment misconduct.

Relator’s third argument is that other circumstances excuse her theft. She argues that other employees also stole from the store without punishment, that the store did not accurately pay her for the hours she worked, that the drinking water provided in the break room was undrinkable, and that the store provided her with coupons for free rotisserie chickens she did not redeem that were worth more than the cans of soda. Relator fails to explain how any of these circumstances would somehow render her intentional theft anything other than employment misconduct. While some of these conditions could potentially entitle relator to some sort of civil or regulatory relief, they do not create a license for employees to steal. We hold that, even assuming relator’s assertions are true, none of them provide a basis to overturn the ULJ’s ruling.

We conclude that the ULJ's factual determinations are supported by the record and that the ULJ did not err in holding that relator's theft constituted employment misconduct. Therefore, the ULJ properly determined that relator is ineligible to receive unemployment benefits.

Affirmed.