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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2133**

Pierre A. Goudiaby,
Relator,

vs.

Sky Water Technology Foundry, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 5, 2019
Affirmed
Reilly, Judge**

Department of Employment and Economic Development
File No. 36745359-3

Pierre A. Goudiaby, Brooklyn Center, Minnesota (pro se relator)

Sky Water Technology Foundry, Inc. (pro se employer)

Katherine Conlin, Anne B. Froelich, Saint Paul, Minnesota (for respondent department)

Considered and decided by Reilly, Presiding Judge; Johnson, Judge; and Hooten,
Judge.

UNPUBLISHED OPINION

REILLY, Judge

Relator challenges the determination of an unemployment-law judge (the ULJ) that
he is ineligible to receive unemployment benefits because he was discharged for

employment misconduct. Because substantial evidence supports the ULJ's determination that relator committed employment misconduct by failing to respond to alarms at a semiconductor facility in a timely manner as required by the employer's written policies, we affirm.

D E C I S I O N

Relator Pierre A. Goudiaby argues that the ULJ erred in finding him ineligible for unemployment benefits. When reviewing an unemployment-insurance-benefits decision, this court may affirm, remand the case for further proceedings, or reverse and modify the decision if the substantial rights of the relator have been prejudiced because, among other things, the decision is unsupported by substantial evidence in view of the entire record as submitted. Minn. Stat. § 268.105, subd. 7(d) (2018).

An employee who is discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2018). Employment misconduct is defined as “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) (2018). “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 an employee committed a particular act is a question of fact viewed in the light most favorable to the ULJ's decision and affirmed if supported by substantial evidence. *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). But we

review de novo the legal question of whether the particular act committed by the employee constitutes employment misconduct. *Id.*

Here, substantial evidence in the record supports the ULJ's decision that relator was discharged for employment misconduct. Relator was employed as a facilities technician with respondent Sky Water Technology Foundry, Inc. (the employer), a semiconductor facility. The employer's written policies required employees to monitor the waste-water tanks and respond to alarms on the tanks within a reasonable amount of time. In the event he could not respond to the alarms in a timely manner, relator was responsible for contacting a supervisor for additional assistance. It is uncontested that relator failed to respond to the alarms in a timely manner on three separate occasions between December 2017 and August 2018. After the second incident, the employer advised relator that failure to respond to future alarms could "result in disciplinary action up to and including immediate termination." After the third incident, the employer terminated relator's employment for repeatedly failing to follow escalation protocols in a timely manner in violation of the employer's written policies.

Relator does not challenge the ULJ's factual findings, which are supported by substantial evidence in the record. Instead, relator argues that his conduct does not rise to the level of misconduct. We disagree. "[R]efusing 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). And committing multiple violations of the same rule demonstrate an employee's substantial lack of concern for the employment. *See Gilkeson v. Indus. Parts & Serv., Inc.*, 383 N.W.2d 448, 452 (Minn. App. 1986) (noting that a pattern

of failing to follow policies and procedures and ignoring directions and requests constitutes misconduct). The ULJ found that relator failed to follow his employer's written policies. Based on the relevant statute and caselaw, we determine that relator's failure to respond to alarms within a timely manner on three separate occasions constitutes employment misconduct because it displayed "a serious violation of the standards of behavior" that the employer had a right to reasonably expect from him. Minn. Stat. § 268.095, subd. 6(a)(1); *see also Skarhus*, 721 N.W.2d at 344 (stating that it is a question of law whether an act constitutes employment misconduct).

We read relator's brief to argue that he did not commit employment misconduct because he acted in good faith when he thought that other employees were responding to the alarms. A good-faith error in judgment is not employment misconduct. Minn. Stat. § 268.095, subd. 6(b)(6) (2018). However, conduct inconsistent with an employee's training or established procedure is not considered a good-faith error of judgment. *See Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 525 (Minn. 1989). Here, the employer had checklists with detailed written instructions regarding responding to alarms, and expected its employees to follow those instructions or communicate problems to a supervisor. Relator does not deny that he was aware of these written policies and received a warning for failing to follow these policies. Relator's failure to follow the employer's established policies does not constitute an error of judgment, and he is not entitled to relief on that basis.

Relator also argues that his termination was racially motivated. However, relator did not provide any factual support for this argument, and we therefore consider the

argument forfeited. *See State v. Manley*, 664 N.W.2d 275, 286 (Minn. 2003) (considering arguments forfeited when they are unsupported by facts in the record and contain “no citation to any relevant legal authority”).

Because we determine that substantial evidence in the record supports the ULJ’s determination that relator was discharged for employment misconduct and therefore was ineligible to receive unemployment benefits, we affirm.

Affirmed.