

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0196**

Zebyderu Abay,
Relator,

vs.

Samaritan Bethany Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed August 9, 2021
Affirmed
Ross, Judge**

Department of Employment and Economic Development
File No. 39502705-3

Zebyderu Abay, Rochester, Minnesota (pro se relator)

Samaritan Bethany, Inc., Rochester, Minnesota (respondent employer)

Anne B. Froelich, Keri Phillips, Minnesota Department of Employment and Economic
Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Ross, Presiding Judge; Segal, Chief Judge; and Gaïtas,
Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

After Zebyderu Abay was discharged from her employment as a medical-care
attendant at an assisted-living facility, she applied for unemployment benefits. The

department of employment and economic development initially granted her application, but an unemployment-law judge determined instead that she was disqualified from receiving benefits because she committed misconduct by failing to administer medication to a resident as prescribed. We affirm because substantial evidence supports the decision.

FACTS

Samaritan Bethany Inc. employed Zebyderu Abay as a medical-care attendant for seven months at an assisted-living facility and terminated the employment in April 2020. The Minnesota Department of Employment and Economic Development (DEED) granted Abay's application for unemployment benefits, and Samaritan Bethany challenged the decision. An unemployment-law judge (ULJ) conducted a hearing, making factual findings that we summarize here.

Abay's supervisor testified that Abay worked as an attendant for residents of an assisted-living facility and that her job duties included administering prescribed medication to residents and recording it. The supervisor received complaints about misplaced medication and monitored Abay's performance. She saw Abay failing to wash her hands properly, to put on gloves before dispensing medication, and to properly document medication dispensing.

Although the supervisor attempted to correct Abay's error by teaching her the proper method to document medication dispensing, Abay repeated her mistake the next day. The facility's records informed the supervisor that Abay also failed to provide a resident with medication as prescribed. Abay had documented that she provided a resident with prescribed medication, but the pill bottle associated with that medication was later

found on a different floor of the facility unrelated to the resident who had the prescription. Samaritan Bethany discharged Abay the same day.

The ULJ found that Abay performed her documentation duties using her best effort and that her documentation errors were not employment misconduct because she lacked the capacity to complete the recording as required. But the ULJ determined that Abay's failure to administer medication as prescribed constituted employment misconduct. The ULJ confirmed that determination after Abay asked for reconsideration.

Abay appeals by certiorari.

DECISION

Abay challenges the ULJ's conclusion that she engaged in employment misconduct. A person fired for employment misconduct is not eligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4 (2020). Employment misconduct is "any intentional, negligent, or indifferent conduct . . . that is a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee." *Id.*, subd. 6(a) (2020). Whether an employee's conduct constitutes misconduct is a mixed question of fact and law. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). We examine the record to review the ULJ's factual findings and will affirm them if they are supported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d) (2020); *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Gonzalez Diaz v. Three Rivers Cmty. Action, Inc.*, 917 N.W.2d 813, 816 n.4 (Minn. App. 2018) (emphasis and quotation omitted). If the evidence supports the findings, we determine de novo

whether the person's conduct constitutes employment misconduct. *Stagg*, 796 N.W.2d at 315. Abay's appeal requires us to determine if the evidence supports the findings and the findings support the conclusion that she engaged in misconduct.

We first address Abay's contention that the evidence does not support the ULJ's factual finding that she failed to administer medication as prescribed to a resident. The evidence is not overwhelming, but it supports the findings. We do not reweigh conflicting evidence here but look to the record only to determine whether the evidence reasonably supports the ULJ's factual finding. *Wilson*, 888 N.W.2d at 460. Testimony at the evidentiary hearing revealed that Abay was tasked with providing residents with precise medication as prescribed. Abay's supervisor testified that Abay was assigned to administer medication to a first-floor resident and a third-floor resident and to record the disbursements. Abay's documentation led the supervisor to conclude that Abay had given the required medication to the first-floor resident but not the third-floor resident. The supervisor reasoned that the erroneous omission must have occurred during Abay's shift. Although Abay insisted that she did not commit the error, the ULJ was persuaded that she did. Although the ULJ could have reached a different conclusion based on the conflicting testimony, substantial evidence exists and therefore supports the ULJ's factual finding that Abay failed to administer prescribed medication.

We next address whether Abay's failing to administer the required medication constitutes employment misconduct in this case. We hold that it does. A person's refusal or failure to follow an employer's reasonable policies and requests constitutes a substantial lack of concern for the employer's interests and is misconduct. *See Schmidgall v. FilmTec*

Corp., 644 N.W.2d 801, 804 (Minn. 2002); *see also Brown v. Nat'l Am. Univ.*, 686 N.W.2d 329, 333 (Minn. App. 2004) (explaining that an employee need not violate an express policy for his or her conduct to be prohibited and warrant termination), *review denied* (Minn. Nov. 16, 2004). For obvious reasons, healthcare employers reasonably require their employees to comply with strict standards and protocols bearing on patient health. Courts are in no position to second-guess an employer's considered judgment regarding what is in the patient's best interests. *Ress v. Abbott Nw. Hosp., Inc.*, 448 N.W.2d 519, 525 (Minn. 1989). Abay's failure to carefully and accurately administer the prescribed medication here resulted from either her negligent or indifferent conduct. This in turn supports the legal conclusion that she committed a serious violation of the behavioral standards that Samaritan Bethany reasonably established and is therefore disqualified from receiving unemployment benefits.

Our conclusion is not altered by Abay's contention that she was unaware of the primary reason for her dismissal before the evidentiary hearing and was prepared only to defend against the allegation that she improperly documented her medication dispensing. But Samaritan Bethany raised the issue when it appealed to the ULJ. Her claimed difficulty understanding English also does not raise any due-process concern that compels us to reverse; she did not request a translator or complain to the ULJ that she did not understand any part of the proceedings. Her answers to questions corresponded to the questions asked of her during the hearing.

Affirmed.