

*This opinion is nonprecedential except as provided by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
A21-0999**

Karen M. Erickson,
Relator,

vs.

Legacy of Delano, LLC,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed April 25, 2022
Affirmed
Smith, Tracy M., Judge**

Department of Employment and Economic Development
File No. 41706905-6

Karen M. Erickson, Howard Lake, Minnesota (pro se relator)

Jenny H. Fuller, Fox Rothschild LLP, Minneapolis, Minnesota (for respondent-employer)

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

Considered and decided by Reilly, Presiding Judge; Connolly, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Relator Karen Erickson appeals an unemployment-law judge's (ULJ) determination that she is ineligible for unemployment benefits because she was discharged due to

employment misconduct. Because the record supports the ULJ's findings that Erickson engaged in conduct that violated her employer's policies, and because those acts constitute employment misconduct, we affirm.

FACTS

Erickson worked as a home health aide for Legacy of Delano, LLC, from March 2, 2020, to June 26, 2020. Legacy discharged Erickson on June 26 following a number of incidents at work.

Legacy has a policy prohibiting employees from using their personal phones in common areas or in front of clients. On April 7, Erickson used her cellphone to talk with her daughter in the lobby area and spoke loudly on the call. The ULJ found that Erickson was not on break at the time of the call. Erickson received counseling from Legacy and was required to review the policy.

Legacy also has a policy and standard of practice requiring that medications be signed for when they are received and that all narcotics be recorded in a narcotics book. The ULJ found that Erickson received training on this policy and practice. On May 14, Erickson placed narcotic medication into a resident's lockbox without recording that it had been received. As a result, Erickson received counseling from Legacy.

Other incidents involving medication followed. On May 26, Erickson recorded administering medication to a resident when she had not done so. On May 27, Erickson left her medication keys in a medication cabinet with the door open. She also left medications on a counter after administering them and did not lock them up. In addition, Erickson improperly turned in medication cards to be destroyed that were not meant to be

destroyed because she did not know which medication cards should be destroyed and which ones should not be. Erickson again received counseling from Legacy, and Legacy extended her introductory period.

On June 11, Erickson signed off on having administered Vitamin D to a resident even though she had not administered it. Erickson again received counseling and received reeducation on medication administration.

Other issues followed. On June 12, while being supervised, Erickson attempted to administer eye drops without gloves on, attempted to go from one room to another without performing required hand hygiene, and crushed medication into a client's food but attempted to leave without observing the client take the medication. Erickson was reeducated about policies and procedures.

Finally, Legacy has a policy that requires the involvement of two people when using a mechanical lift to lift a resident. Erickson received training that this was Legacy's policy. On June 19, Erickson lifted and transported a resident to the bathroom by herself although the resident's record required the use of the two-person mechanical lift.

On June 26, Legacy discharged Erickson for violating policies and procedures after receiving coaching.

Following her discharge, Erickson applied for unemployment benefits with respondent Minnesota Department of Employment and Economic Development (DEED). DEED administratively determined that Erickson was not eligible for unemployment benefits because Legacy discharged her for employment misconduct. Erickson appealed that decision.

A ULJ conducted a hearing on Erickson’s appeal. Erickson appeared at the hearing, as did Legacy’s executive director and director of health services. The ULJ determined that Erickson engaged in both intentional and negligent conduct in violation of Legacy’s reasonable policies and its reasonable expectation that she perform her job duties as directed. The ULJ cited Erickson’s failure to properly store and record medications, failure to properly administer and accurately record the administration of medications, failure to follow handwashing and gloving procedures, and lifting of a resident by herself when the resident’s records called for use of a two-person mechanical lift. The ULJ concluded that these actions constituted employment misconduct. Erickson requested reconsideration, and the ULJ affirmed the decision.

This certiorari appeal follows.

DECISION

Erickson argues that the ULJ erred by determining that she committed employment misconduct and that the ULJ wrongly permitted testimony from the executive director that referred to a document that was not submitted as an exhibit.

I. The ULJ did not err by determining that Erickson was discharged due to employment misconduct.

An employee generally is ineligible for unemployment benefits if she “was discharged because of employment misconduct.” Minn. Stat. § 268.095, subd. 4(1) (2020). Whether an employee committed employment misconduct is a mixed question of fact and law. *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016). The determination of whether an employee committed a particular act is a question of fact.

Cunningham v. Wal-Mart Assocs., Inc., 809 N.W.2d 231, 235 (Minn. App. 2011). “Factual findings are reviewed in the light most favorable to the decision, giving deference to the credibility determinations made by the ULJ, and will not be disturbed when the evidence substantially sustains them.” *Lawrence v. Ratzlaff Motor Express Inc.*, 785 N.W.2d 819, 822 (Minn. App. 2010), *rev. denied* (Minn. Sept. 29, 2010). Whether the factual findings establish employment misconduct is a question of law, which we review de novo. *Id.*

A. The ULJ’s factual findings are supported by the record.

Erickson disputes two factual findings.

First, Erickson argues that the ULJ erred by finding that she was not on break when she used her cellphone. Legacy’s executive director stated during the hearing that Erickson was not on break at the time of the call, that the call occurred around 2:15 p.m., that Erickson’s break was from 1:15 to 1:53 p.m., and that Erickson clocked in and out for her break. The ULJ found the executive director’s testimony credible. Moreover, during the hearing, Erickson appeared to concede that the call took place after her break, stating, “I don’t, whatever she said my timecard said. I believe her” and “[I]f that’s what she said and my timecard said, then that’s what my timecard said.” The ULJ’s factual finding regarding Erickson’s cellphone use is supported by the record.

Second, Erickson argues that the ULJ erred in finding that she was trained to log narcotics because, while she was trained to log narcotics after giving medication to a resident, she was not trained to accept narcotics into the building until after the incident occurred. At the hearing, Erickson testified that she should not have been asked to sign for the narcotics because she “did not have training for putting narcs in the book when they

were received.” The executive director testified that Erickson placed medications into a cabinet without recording the narcotics in a book and that Erickson would have been trained to record the narcotics. The executive director testified that home health aides receive initial training on accepting packets of new narcotics into the building and that “[t]hat is part of their job.” The ULJ found that Erickson’s testimony was “less credible [than the executive director’s] because it was uncertain and less reasonable.” Although the evidence was conflicting, we defer to the ULJ’s credibility determinations. The ULJ’s factual finding that Erickson was trained to log narcotics before the incidents at issue is supported by the record.

B. The ULJ did not err by concluding that Erickson’s actions constituted unemployment misconduct.

Erickson argues that the ULJ erred by determining that her actions constituted employment misconduct.

“Employment misconduct means any intentional, negligent, or indifferent conduct, on the job or off the job, that is a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee.” Minn. Stat. § 268.095, subd. 6(a) (2020). In general, an employee’s failure “to abide by an employer’s reasonable policies and requests” constitutes employment misconduct. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002).

Legacy had reasonable policies and standards in place governing the safe maintenance of narcotics and resident care. Erickson’s conduct violated those policies and standards. Most significantly, Erickson placed narcotics into a cabinet without recording

that they had been received; on more than one occasion, she recorded administering medication to a resident when she had not done so; and she lifted and transported a resident by herself when Legacy's policy dictated that two people were required to lift the resident. As the ULJ concluded, some of Erickson's violations were intentional and some were negligent. And the violations were serious because they occurred despite training and repeated coaching and because they involved the safety of residents.

Erickson contends that the ULJ erred by concluding that any of her conduct was negligent because, in response to a DEED request for information prior to the hearing, Legacy answered, "No," when asked whether the employee was "negligent in the performance of [her] duties, as opposed to unable to meet expectations." But an employer's characterization of conduct as not negligent is not determinative. *See* Minn. Stat. § 268.105, subd. 1(a) (2020). And the ULJ's factual findings support the determination of negligence. Erickson received counseling after she failed to record narcotics. But shortly thereafter she violated policies and standards regarding medication and resident care, including by recording that she administered a medication that she did not administer. She received additional counseling and signed a counseling form stating, "I totally understand this. I knew what I was doing and got ahead of myself." But again, Erickson recorded administering medication that she did not administer. The ULJ did not err by determining that Erickson engaged in negligent conduct that seriously violated her employer's reasonable standards for resident care.

Erickson also challenges the ULJ's decision because, she asserts, Legacy has not discharged other employees who have violated medication policies and standards. But

whether other employees violated an employer's rules and were not discharged is irrelevant to whether Erickson engaged in disqualifying employment misconduct. *See Sivertson v. Sims Sec., Inc.*, 390 N.W.2d 868, 871 (Minn. App. 1986), *rev. denied* (Minn. Aug. 20, 1986).

In sum, the ULJ did not err by determining that Erickson was discharged because of employment misconduct.

II. The ULJ did not abuse its discretion regarding the admission of evidence at the hearing.

Erickson suggests that the ULJ made an evidentiary error, rendering the hearing unfair. She writes, "If the documents are supposed to be copied to the State of Minnesota and to the parties before the court hearings via the court of law, in order for them to be accepted, why were they accepted?"

A ULJ "must ensure that all relevant facts are clearly and fully developed" and "assist all parties in the presentation of evidence." Minn. R. 3310.2921 (2021). A ULJ's evidentiary rulings are reviewed for an abuse of discretion. *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 566 (Minn. App. 2001), *rev. denied* (Minn. Nov. 13, 2001).

Erickson does not identify any admitted exhibits that she believes were wrongly admitted, and she had no objections to any exhibits at the hearing. Rather, Erickson appears to refer to a document that Legacy attempted to introduce that it had submitted but that was apparently not timely shared with Erickson as required for proposed exhibits. By description at the hearing, that document consisted of records of Legacy's policies and documentation of Erickson's training, investigation, and discharge. Because that document

was not included in the proposed exhibits, the ULJ did not admit it into evidence. But the ULJ permitted the executive director to refer to it during her testimony and stated, “[I]f there are any issues or, um, things that are discussed that I need to have submitted again, we can discuss it at the end of the hearing.” The executive director did refer to the document when testifying regarding Erickson’s timesheet on the day she used her cellphone during breaktime and regarding her training on recording narcotics.

We discern no abuse of discretion. The ULJ did not admit a document that apparently was not properly presented as a proposed exhibit. The ULJ permitted the executive director to refer to the document during her testimony, and she did. But Erickson raised no objection to that testimony, nor did she ask to see the document or request any other relief at the hearing. The ULJ’s treatment of the document and related testimony was within the ULJ’s discretion and did not render the evidentiary hearing unfair.

Affirmed.