



## **Cunnien v. Medical Arts Press Inc.**

2008 | Cited 0 times | Court of Appeals of Minnesota | July 1, 2008

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2006).

Affirmed

Considered and decided by Shumaker, Presiding Judge; Hudson, Judge; and Schellhas, Judge.

### **UNPUBLISHED OPINION**

On certiorari appeal from a decision by the unemployment-law judge (ULJ) that she was disqualified from receiving unemployment benefits because she had been discharged for employment misconduct, relator argues that the ULJ erred (1) in crediting testimony of the employer's witnesses because they were lying; and (2) by denying her request to reopen the record. Because the ULJ's decision is supported by the record, we affirm.

### **FACTS**

In October 2004, relator Susan Cunnien began working full-time for Medical Arts Press Inc. (Medical Arts) as a telephone salesperson. Medical Arts sells office-supply products through catalogues that are sent to prospective customers. The catalogues contain coupons that customers can use to get discounts or gift premiums with qualifying purchases. When a customer calls to place an order, the customer provides the telephone salesperson with a code number off the coupon, which the salesperson enters with the order. The discount or premium is then automatically included in the order. If a customer calls and asks for a discount or premium but has lost the coupon, the telephone salesperson is authorized to manually override the code requirement and issue a discount or premium without the required code. But Medical Arts' policy allows the salesperson to manually override the code requirement only once for each customer.

In January 2007, Medical Arts' accounting department discovered that relator had been issuing an unusual number of discounts and premiums to one customer, Par 4 Liquors. Further investigation revealed that Par 4 Liquors was owned by relator's friend. After reviewing the multiple discounts and premiums that relator had processed for Par 4 Liquors, relator's supervisors concluded that relator manually overrode the coupon-code requirement and hand-entered the discount or premium for ten different orders. Of those ten orders, Par 4 Liquors did not qualify for the actual discounts or premiums for nine of the orders. Relator's supervisors calculated the total amount of the discounts



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and premiums to be \$165.28.

Relator's supervisors confronted her about their findings on January 12, 2007. Consequently, relator signed a document that states: "I, [relator], violated company policy by giving several unauthorized discounts and product premiums on orders to myself and to the customer, Par 4." Relator also signed a promissory note for \$165.28 and promised to make restitution.

Medical Arts discharged relator on January 12, 2007, for violating company policy by processing unauthorized discounts and product premiums for her friend's business. Relator subsequently established a benefit account with respondent Minnesota Department of Employment and Economic Development (department). A department adjudicator initially determined that relator was discharged for employment misconduct and held her disqualified from receiving benefits. Relator appealed that determination and, following de novo hearing on the matter, an unemployment-law judge (ULJ) affirmed the initial determination. Following a request for reconsideration, the ULJ affirmed the decision that relator was discharged for employment misconduct. The ULJ also denied relator's request to reopen the record. This certiorari appeal follows.

### DECISION

This court may reverse or modify the decision of a ULJ if the substantial rights of the petitioner may have been prejudiced because the ULJ's findings, inferences, conclusion, or decision are affected by error of law or unsupported by substantial evidence. Minn. Stat. § 268.105, subd. 7(d)(4), (5) (2006). Substantial evidence means "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." Minn. Ctr. for Env'tl. Advocacy v. Minn. Pollution Control Agency, 644 N.W.2d 457, 466 (Minn. 2002).

#### I.

Employees discharged for misconduct are disqualified from receiving unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2006). "Whether an employee engaged in conduct that disqualifies the employee from unemployment benefits is a mixed question of fact and law." Schmidgall v. FilmTec Corp., 644 N.W.2d 801, 804 (Minn. 2002). Whether an employee committed the alleged act is a fact question. Scheunemann v. Radisson S. Hotel, 562 N.W.2d 32, 34 (Minn. App. 1997). We defer to the ULJ's credibility determinations and do not disturb findings of fact unless they are unsupported by substantial evidence. Ywsfw v. Teleplan Wireless Servs., Inc., 726 N.W.2d 525, 529 (Minn. App. 2007). But whether a particular act constitutes employment misconduct is a question of law, which this court reviews de novo. Schmidgall, 644 N.W.2d at 804.

Employment misconduct is defined as any intentional, negligent, or indifferent conduct, on the job or off the job (1) that displays clearly a serious violation of the standards of behavior the employer has



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the right to reasonably expect of the employee, or (2) that displays clearly a substantial lack of concern for the employment.

Inefficiency, inadvertence, simple unsatisfactory conduct, a single incident that does not have a significant adverse impact on the employer, conduct an average reasonable employee would have engaged in under the circumstances, poor performance because of inability or incapacity, good faith errors in judgment if judgment was required, or absence because of illness or injury with proper notice to the employer, are not employment misconduct.

Minn. Stat. § 268.095, subd. 6(a) (2006).

Here, the ULJ found that relator was not entitled to unemployment benefits because she was discharged for employment misconduct. To support the decision, the ULJ found that two of relator's supervisors and a human resources manager "testified that they saw the computer records that show that [relator] manually overrode the coupon codes on the Par 4 Liquors orders." The ULJ also found that these employees "pointed out several premiums that were issued to Par 4 Liquors without qualifying purchases." The ULJ concluded that this testimony, along with relator's signed admission of wrongdoing, demonstrated by a preponderance of the evidence that relator's actions constituted employment misconduct.

Relator argues that the ULJ erred in making its decision because she had legitimate coupons for each of the discounts and premiums she processed for Par 4 Liquors and the Medical Arts employees who testified against relator were lying. We disagree. Relator's supervisors and the human resources manager specifically testified that their review of the transactions at issue showed that no coupon codes were entered. Moreover, when the ULJ questioned relator about the transactions, relator's answers were vague, and she claimed she was unable to recall the transactions. This court defers to the ULJ's credibility determinations. *Ywswf*, 726 N.W.2d at 529. Accordingly, the ULJ's decision that relator was discharged for employment misconduct is supported by the record.

II.

Relator also contends that the ULJ erred in denying her request to reopen the record. Minnesota law provides that:

In deciding a request for reconsideration, the unemployment law judge shall not, except for purposes of determining whether to order an additional evidentiary hearing, consider any evidence that was not submitted at the evidentiary hearing conducted under subdivision 1.

The unemployment law judge must order an additional evidentiary hearing if an involved party shows that evidence which was not submitted at the evidentiary hearing (1) would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence;



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or

(2) would show that the evidence that was submitted at the evidentiary hearing was likely false and that the likely false evidence had an effect on the outcome of the decision.

Minn. Stat. § 268.105, subd. 2(c) (2006) (emphasis added).

In her request for reconsideration, relator moved to introduce evidence that was not introduced at the evidentiary hearing. Specifically, relator claimed that after going through some papers that she brought home from work after cleaning out her desk, she discovered a coupon supporting her claim that she did use the coupon codes when providing Par 4 Liquors with discounts. Relator also sought to introduce a document that she claims shows that the codes were used when processing the discounts for Par 4 Liquors. In declining to consider this evidence, the ULJ found that "[t]here is no explanation of [relator's] failure to introduce this evidence at the hearing. Absent a showing of good cause, the record will not be reopened."

We conclude that the ULJ's decision is supported by the record. Relator failed to show good cause for failing to submit the new evidence. Under the statute, that is enough to deny relator's request to reopen the record. See Minn. Stat. § 268.105, subd. 2(c) (stating that an additional evidentiary hearing should only be granted if the new evidence "would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence" (emphasis added)). Moreover, the additional evidence would most likely not have changed the outcome of the decision. Relator attempted to submit one coupon, claiming that based on that coupon, she did enter the coupon codes for her friend at Par 4 Liquors. But it was alleged that Par 4 Liquors did not qualify for the actual discounts or premiums for nine of ten orders. Even accepting relator's evidence, there would still be eight orders for which Par 4 Liquors did not qualify for the discounts. Also, the printout that relator attempted to submit shows only three orders. Again, this evidence fails to account for seven of the ten orders made by Par 4 Liquors. Therefore, the ULJ did not err in denying relator's request to reopen the record.

Affirmed.

