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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1206**

Cari Van Hecke,
Relator,

vs.

Annandale Advocate, Inc.,
Respondent,

Department of Employment and
Economic Development,
Respondent.

**Filed March 27, 2017
Affirmed
Jesson, Judge**

Department of Employment and
Economic Development
File No. 34456969-3

Cari Van Hecke, Howard Lake, Minnesota (pro se relator)

Annandale Advocate, Inc., Annandale, Minnesota (respondent employer)

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

Considered and decided by Halbrooks, Presiding Judge; Cleary, Chief Judge; and
Jesson, Judge.

UNPUBLISHED OPINION

JESSON, Judge

Relator Cari Van Hecke challenges an unemployment-law judge's determination that she is ineligible for unemployment benefits because of a discharge for employment misconduct. Because substantial evidence supports the unemployment-law judge's determination that Van Hecke committed employment misconduct by doing freelance work on company time and equipment, we affirm.

FACTS

From 2004 until March 2016, Van Hecke worked as a graphic designer for the Annandale Advocate, a local newspaper and advertiser in Wright County. The Advocate is a small business. It is composed of a publisher, Steven Prinsen, his wife and co-owner of the business, Sharon Schumacher, and five or six employees. Van Hecke was a full-time employee, primarily engaged in advertising design and setup. In addition to her work at the Advocate, Van Hecke did freelance graphic-design work. Van Hecke knew she should not work on freelance projects during her workday on her computer at the Advocate.

Prinsen maintained the business's computer network, and he had remote access to all of his employees' computers. In December 2015, he stumbled upon a folder on Van Hecke's computer that "seemed odd." He began to monitor the folder and found freelance work unrelated to the Advocate, specifically, print-advertising work for other publications. On December 30, 2015, he met with Van Hecke and told her to refrain from doing outside work on the Advocate's computers. Van Hecke denied doing such work.

In the months following that meeting, Prinsen checked Van Hecke's computer to determine whether she continued to do outside work on the Advocate's computers. Based upon the timestamps on Van Hecke's computer files, Prinsen could see that she was performing outside work on her Advocate computer during her regular work hours for the Advocate. In particular, on February 26 and March 1 of 2016, Prinsen observed that Van Hecke spent approximately three hours of combined time using the Advocate's equipment to do freelance work. Further, Schumacher overheard Van Hecke call another newspaper during working hours to discuss work unrelated to the Advocate. Because of these infractions, Prinsen discharged Van Hecke from her employment.

Van Hecke applied for unemployment benefits. The Minnesota Department of Employment and Economic Development determined that she was ineligible for benefits because she was discharged for employment misconduct. Van Hecke appealed that determination. An unemployment-law judge (ULJ) conducted a telephone hearing where testimony was taken from Van Hecke, Prinsen, and Schumacher. Images taken from Van Hecke's work computer were submitted into evidence, as well as a copy of the Advocate's employee handbook, which prohibited both the "[u]nauthorized use of company-owned equipment and supplies for personal use" and working on "personal projects" during working hours without permission. The ULJ issued a decision, determining that Van Hecke was ineligible for unemployment benefits because she was discharged for employment misconduct.

In the decision, the ULJ found Prinsen's testimony credible because it was detailed, logical, and corroborated by documentation while Van Hecke's blanket denial was not

credible in light of the evidence. As a result, the ULJ determined that Van Hecke worked on freelance projects during working hours at the Advocate while using the Advocate's equipment to do so. Van Hecke sought reconsideration of the ULJ's decision, which was denied. This certiorari appeal follows.

D E C I S I O N

An applicant who is discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4 (2016). Van Hecke argues that the employment-misconduct determination was based on false accusations by her employer. She further argues that another employee at the Advocate did freelance work with the Advocate's equipment without facing employment termination.¹ Finally, Van Hecke contends that, even if the allegations were true, there was insufficient evidence of misconduct to determine her ineligible for benefits.

When reviewing a ULJ's 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. Minn. Stat. § 268.105, subd. 7(d) (2016). Determining whether an employee's conduct disqualifies the employee from unemployment benefits presents a mixed question of fact and law. *Stagg v. Vintage Place Inc.*, 796 N.W.2d 312, 315 (Minn. 2011). Whether an employee committed a particular act is a question of fact viewed in the light most

¹ On appeal and in her initial claim, Van Hecke notes that criticisms at work began upon her return from maternity leave. But she does not assert that her employment termination is attributable to that leave. Further, she did not address, through her own testimony or questioning of witnesses, her pregnancy or leave during the hearing before the ULJ.

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).

Here, the ULJ found that Van Hecke worked on freelance projects during work hours at the Advocate and used the Advocate's equipment without permission to do those projects. Substantial evidence supports these findings.

The ULJ found the testimony of Prinsen credible. Credibility determinations are the exclusive province of the ULJ. *Id.* at 345. Prinsen testified that Van Hecke was doing freelance work on her computer during work hours and specifically pointed to February 26 and March 1 of 2016, when Van Hecke spent approximately three hours of combined time using the Advocate's equipment to do freelance work. Images from Van Hecke's computer were submitted into evidence to support this claim. This is substantial evidence; it is evidence a reasonable person would accept as adequate to support the findings that Van Hecke worked on freelance projects during work hours at the Advocate, using the Advocate's equipment without permission to do so. *See Minn. Ctr. for Env'tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

Van Hecke's argument that the images submitted into evidence were "false allegations" because they were from a thumb drive, not her work computer, presents a factual dispute. The ULJ decided this dispute, based upon a credibility determination, in favor of the employer. *See Skarhus*, 721 N.W.2d at 345 (noting credibility determinations are the exclusive province of the ULJ). Prinsen acknowledged that the screenshots were captured from his computer, not Van Hecke's, but he asserted that the actual files being documented were taken from Van Hecke's computer. Likewise, Van Hecke's argument

that another employee at the Advocate was doing freelance work is not persuasive. Prinsen testified that the other employee “did like one or two things,” the work was performed during off-hours, and the employee gave Prinsen prior notice. Van Hecke did not challenge this testimony regarding the scope and nature of the other employee’s freelance work. In summary, substantial evidence supports the ULJ’s findings that Van Hecke worked on freelance projects during work hours at the Advocate and used the Advocate’s equipment without permission to do those projects.

We next address whether Van Hecke’s acts constitute employment misconduct. The legal question of whether a particular act committed by the employee constitutes employment misconduct is reviewed de novo. *Skarhus*, 721 N.W.2d at 344. Refusing to follow an employer’s reasonable policies and requests constitutes employment misconduct. *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). Here, the Advocate’s employee handbook prohibited both the “[u]nauthorized use of company-owned equipment and supplies for personal use” and working on “personal projects” during working hours without permission. Further, Prinsen met with Van Hecke and instructed her to refrain from performing freelance work on the Advocate’s computers. Van Hecke failed to abide by her employer’s reasonable policies and requests, and her actions constitute employment misconduct.

Substantial evidence supports the ULJ’s findings that Van Hecke did freelance work on her employer’s time and equipment. This was a violation of the employer’s reasonable policies and requests and constituted employment misconduct. The ULJ properly determined that Van Hecke is ineligible for unemployment benefits.

Affirmed.