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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1061**

Granville Butler,
Relator,

vs.

Primeflight Aviation Services, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed February 12, 2018
Affirmed
Schellhas, Judge**

Department of Employment and Economic Development
File No. 35447306-3

Granville Butler, St. Paul, Minnesota (pro se relator)

Primeflight Aviation Services, Inc., Nashville, Tennessee (respondent employer)

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

Considered and decided by Kirk, Presiding Judge; Halbrooks, Judge; and Schellhas,
Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that he is ineligible for unemployment benefits because he was discharged from his employment for misconduct. We affirm.

FACTS

In July 2014, relator Granville Butler began working for respondent Primeflight Aviation Services, Inc. Primeflight has a policy prohibiting “[o]bscene or abusive language . . . while on the job.” In February 2017, Primeflight terminated Butler’s employment for violating this policy. According to the “Corrective Action Notice,” operations manager, J.G., instructed Butler on February 21, 2017, “to take his lunch break at 14:34 in preparation for the busy time of the operation which is usually between 1500-1800 daily.” When J.G. later asked Butler if had had gone to lunch, Butler replied: “No I did not hear you.” After explaining to Butler that he had called him three times on the radio to tell him to go to lunch, J.G. instructed Butler to “clock out” due to his failure to follow directions. Butler told J.G., “You’re a f--king a--hole, and walked away.”

Following his discharge from employment with Primeflight, Butler established a benefits account with respondent Minnesota Department of Employment and Economic Development (DEED), and DEED determined that Butler is ineligible for unemployment benefits because he was discharged for employment misconduct. Butler appealed the determination and a ULJ conducted a de novo hearing. At the hearing, Butler claimed that he never heard J.G. tell him to go to lunch and denied calling J.G. a “f--king a--hole.”

Butler claimed that he was on the phone, explaining the situation to a person who was bringing him lunch, when he characterized the situation as “some a--hole sh-t.”

The ULJ found that Butler’s testimony “was not credible.” Noting that an “employer has the right to reasonably expect an employee to refrain from telling a supervisor that [he] is a ‘f--king a--hole’” in response to supervisory instruction at work, the ULJ determined that Butler’s comments constituted employment misconduct because they were intentional and “demonstrated clearly a substantial lack of concern for the employment.” The ULJ therefore decided that Butler is ineligible for unemployment benefits. Butler subsequently requested reconsideration, and a different ULJ affirmed.

This certiorari appeal follows.

D E C I S I O N

This court may reverse the decision of a ULJ “if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are . . . unsupported by substantial evidence in view of the entire record as submitted.” Minn. Stat. § 268.105, subd. 7(d)(5) (2016). Whether an employee committed employment misconduct is a mixed question of law and fact. *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016).

Whether an employee committed a particular act is an issue of fact. *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). We review factual findings “in the light most favorable to the decision,” and will not disturb them “as long as there is evidence in the record that reasonably tends to sustain them.” *Wilson*, 888 N.W.2d at 460

(quotations omitted). But whether a particular act constitutes employment misconduct is a legal question that is reviewed de novo. *Id.*

An employee who is discharged for employment misconduct is ineligible for unemployment benefits. Minn. Stat. § 268.095, subd. 4(1) (2016). “Employment misconduct means 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.” Minn. Stat. § 268.095, subd. 6(a) (Supp. 2017). “As a general rule, refusing 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).

Butler challenges the ULJ’s decision that he engaged in employment misconduct, arguing that he “did not call [J.G.] a f--king a--hole.” But it is well settled that “[c]redibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Skarhus*, 721 N.W.2d at 345. At the hearing, evidence was presented that Butler called his supervisor a “f--king a--hole” in response to his supervisor telling him to clock out and go home. The supervisor gave him that instruction after Butler failed to follow the instruction to take lunch at the appropriate time. If believed, this evidence establishes that Primeflight discharged Butler for insubordination and violating its policy prohibiting “[o]bscene or abusive language . . . on the job.”

Although Butler testified that he did not call his supervisor a “f--king a--hole,” the ULJ specifically found Butler’s testimony to be less credible than Primeflight’s general

manager's testimony "because it was, at times, unreasonable and illogical," and inconsistent with a written statement that Butler provided to Primeflight following the incident in which he "did not include anything about being on the telephone" when he purportedly told the friend that the situation was some "a--hole sh-t." Because we defer to the ULJ's credibility determinations, the ULJ did not clearly err by finding that Butler called his supervisor a "f--king a--hole." And because Butler's conduct constitutes employment misconduct, the ULJ properly determined that Butler is ineligible for unemployment benefits.

Affirmed.