

2014 WL 2178767

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Court of Appeals of Minnesota.

Douglas A. PETERSON, Relator,

v.

U.S. FEDERAL EMPLOYEES, Respondent,

Department of Employment and  
Economic Development, Respondent.

No. A13–1354.

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May 27, 2014.

Department of Employment and Economic Development,  
File No. 31038290–3.

#### Attorneys and Law Firms

Douglas A. Peterson, Cottage, Grove, MN, pro se relator.

U.S. Federal Employees/U.S. Postal Service, St. Louis,  
MO, respondent employer, Lee B. Nelson, Department of  
Employment and Economic Development, St. Paul, MN, for  
respondent department.

Considered and decided by [STAUBER](#), Presiding Judge;  
[PETERSON](#), Judge; and [HUDSON](#), Judge.

#### UNPUBLISHED OPINION

[PETERSON](#), Judge.

\*1 This certiorari appeal is from the decision of  
an unemployment-law judge that relator is ineligible to  
receive unemployment-compensation benefits because he  
was discharged from his employment for committing  
employment misconduct. We affirm.

#### FACTS

Relator Douglas Peterson was employed as an automotive  
technician by the United States Postal Service (USPS) from  
1998 through March 15, 2013. Beginning in 2002, the USPS  
required an automotive technician to have a commercial  
driver's license (CDL) if the technician worked in a facility  
where CDL-type vehicles were serviced. The requirement  
applied to the facility where relator worked, and relator  
obtained a CDL in 2002.

To renew a CDL, a driver pays an additional \$11 fee when  
renewing the driver's regular driver's license. In December  
2011, relator chose not to renew his CDL and allowed it to  
expire. Relator testified that he had safety concerns about  
driving vehicles for which a CDL is required because he had  
not driven one in ten years and believed that he needed a  
refresher course or retraining. Relator initially testified that he  
did not tell the USPS that he did not renew his CDL because  
there was no requirement that he tell the USPS about the  
expiration, but later he testified that he mentioned it to his  
supervisor on a few occasions but was not taken seriously.

Automotive technicians are required to test drive the vehicles  
that they repair, and, at least twice in 2012, relator repaired  
vehicles that required a CDL to drive. Relator also towed  
vehicles, and driving the tow truck required a CDL due to  
the combined weight of the tow truck and the vehicle being  
towed.

On October 31, 2012, the USPS discovered that relator's CDL  
had expired. On December 3, 2012, the USPS instructed  
relator to have his CDL reinstated within 14 days. On  
December 26, relator was issued a written warning for failing  
to have his CDL reinstated. When the USPS asked relator why  
he had not renewed his CDL, he stated that his explanation  
was in a written statement to his union. The USPS obtained a  
copy of the statement, which stated:

After approximately 10 years of not  
needing, or using my commercial  
driver's license, in December, 2012, I  
did not renew it. First and foremost,  
the fact that I had not been trained,

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or even driven a vehicle requiring a Class A commercial driver's license in approximately ten years was a huge safety concern for me. Secondly, in today's economy, it doesn't make sense to pay for something that isn't needed or used, that money is better off being used to help people in need.

James Ekholm, a manager at the facility where relator worked, testified that this was the only explanation provided to the USPS about relator's failure to renew his CDL.

On January 8, 2013, the USPS suspended relator for seven days for failing to have his CDL reinstated. At a meeting on January 16, the USPS granted relator another seven days to have his CDL reinstated. On January 22, the USPS suspended relator for 14 days for failing to have his CDL reinstated. On February 13, relator was given a 30-day notice of discharge, and he was discharged on March 15, 2013.

\*2 Relator applied for unemployment benefits, and respondent Minnesota Department of Employment and Economic Development issued a determination of ineligibility. Relator appealed, and a hearing was conducted before an unemployment-law judge (ULJ). The ULJ determined that relator was discharged from employment because he committed employment misconduct and, therefore, was ineligible for unemployment benefits. The ULJ affirmed on reconsideration. This certiorari appeal followed.

### DECISION

We may reverse or modify a ULJ's decision if a relator's substantial rights have been prejudiced because the findings, inferences, conclusion, or decision are made upon unlawful procedure, affected by an error of law, not based on substantial evidence in the record, or arbitrary or capricious. *Minn.Stat. § 268.105, subd. 7(d)(3)-(6) (2012)*. “Whether an employee committed employment misconduct is a mixed question of fact and law.” *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn.App.2006). We review whether the employee committed a particular act as a question of fact, but consider whether the act constitutes employment misconduct as a

question of law. *Id.* The ULJ's findings of fact are viewed in the light most favorable to the decision, and the findings will not be disturbed if the evidence substantially supports them. *Id.*

An employee who is discharged for employment misconduct is ineligible for unemployment benefits. *Minn.Stat. § 268.095, subd. 4(1) (2012)*. “Employment misconduct” is “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.” *Id.*, subd. 6(a) (2012).

Relator argues that the USPS did not instruct him to maintain his CDL or discipline him for letting it expire until one year after it expired. But relator admitted that he knew that having a CDL was a requirement of his job, and Ekholm testified, and the ULJ found, that the USPS did not discover until October 31, 2012, that relator's CDL had expired. Although relator testified that he told his supervisor that his CDL had expired and that he had expressed safety concerns to the USPS over the years, Ekholm testified that the USPS did not learn until October 31, 2012, that relator's CDL had expired and that the only explanation provided by relator for his failure to renew his CDL was relator's statement to the union. The ULJ specifically found that the testimony presented by the USPS was more credible than relator's testimony. This court will affirm a ULJ's credibility findings when supported by substantial evidence in the record. *Wichmann v. Travalia & U.S. Directives, Inc.*, 729 N.W.2d 23, 29 (Minn.App.2007); *Ywsfwf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 533 (Minn.App.2007).

Relator argues that he was given only seven or 14 days to have his CDL reinstated and that it would have taken him at least 30 days to get the training he needed to have his CDL reinstated. But the USPS instructed relator on December 3, 2012, to have his CDL reinstated within 14 days; it then gave relator several additional chances to have it reinstated before he was discharged more than three months later on March 15, 2013.

\*3 Relator also claims that he could not afford training. Relator testified that he looked into training at a community college that cost \$4,000. But the record does not demonstrate that relator could not have renewed his CDL by simply paying

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an additional \$11 fee when renewing his regular driver's license. And Ekholm testified that, after letting his CDL expire, relator could have rented a class-A vehicle and taken the driver's test for a CDL. Because relator did not take and fail the test, there is no basis to conclude that training was needed.

Relator argues that [sleep apnea](#) prevented him from having his CDL reinstated. Relator's supervisor testified that, in January and February 2013, relator stated that he might have a medical condition that could prevent him from having his CDL reinstated. Relator was granted medical leave to see a doctor, and, after seeing a doctor, he did not say anything more to his supervisor about the medical condition.

As the ULJ explained:

The [USPS] has the right to reasonably expect its employees would follow reasonable requests and would maintain their CDL. [Relator] knew a CDL was required for his position since 2002. He did not dispute

this. Despite quite a few warnings, [relator] intentionally disregarded his employer's request to renew his CDL. The failure to maintain a CDL in this case was a serious breach of an essential requirement of [relator's] job. [Relator] did not have a compelling reason for his insubordinate conduct.

See [Schmidgall v. FilmTec Corp.](#), 644 N.W.2d 801, 804 (Minn.2002) (“As a general rule, refusing to abide by an employer's reasonable policies and requests amounts to disqualifying misconduct.”); [Deike v. Gopher Smelting](#), 413 N.W.2d 590, 592 (Minn.App.1987) (“The Minnesota courts have held that an employee's insubordination may constitute misconduct.”).

**Affirmed.**

**All Citations**

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