

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

VIRGINIA L WASHINGTON
Claimant

APPEAL NO. 10A-UI-15347-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABM JANITORIALSERVICES NORTH
Employer

OC: 08/29/10
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

ABM Janitorial Services North (ABM) filed an appeal from a representative's decision dated October 26, 2010, reference 01, which held that no disqualification would be imposed regarding Virginia Washington's separation from employment. After due notice was issued, a hearing was held by telephone on December 20, 2010. Ms. Washington participated personally. The employer participated by Patty Lee, District Manager, and Ken Hampton, Supervisor. The employer was represented by Sandy Linsin of Employers Edge.

ISSUE:

At issue in this matter is whether Ms. Washington was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Washington was employed by ABM from January 6, 2009 until September 1, 2010 as a full-time cleaner. On or about August 25, the employer was notified by its client company, John Deere, that Ms. Washington had been observed on video surveillance removing property without authorization. It was estimated that she took three or four Styrofoam cups from the kitchen area in the cafeteria operated by Aramark on the John Deere premises. The removal occurred over the course of several days.

Ms. Washington was the only crew member with a key to the kitchen. She sometimes allowed other employees to borrow her key to access the kitchen to get condiment packets and Styrofoam cups. The crew also got ice from the kitchen for office events. The supervisor, Ken Hampton, was aware that the crew was removing items from the kitchen without authorization. He was present when other employees requested to use Ms. Washington's key to access the kitchen. He never advised her that she was violating policy or that she had to cease such conduct. Ms. Washington had previously asked a person she believed to be in management in the kitchen if she could purchase a cup and was told she did not have to. Her removal of the cups was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Washington was discharged for what the employer considered to be the unauthorized removal of property belonging to the employer's customer, John Deere. Such conduct constituted a violation of the employer's policies. The administrative law judge concludes that the conduct complained of in this matter was not without authorization.

Ms. Washington was credible in her testimony that she had spoken to someone in management in the kitchen to obtain permission to take a Styrofoam cup without making payment. Whether the cups were the actual property of Aramark or the property of John Deere is irrelevant to this determination. Ms. Washington had no way of knowing that the Aramark employee did not have the authority to allow her to take cups without payment. Most persuasive in this matter is the fact that Ms. Washington had at least the tacit approval of her supervisor. Mr. Hampton was aware that she was accessing the kitchen to take items and that she allowed others to access the area to get condiments. The fact that the supervisor allowed the conduct to continue left Ms. Washington with the impression that her actions were not a problem.

The value of the items Ms. Washington and others removed is not an issue as theft in any amount is still theft. However, it is important to note that the items removed (Styrofoam cups with ice and condiment packets) were being used only for the days meals. They were not removing large quantities of cups or condiments. They were not removing food items or other large-ticket items.

After considering all of the evidence, the administrative law judge concludes that Ms. Washington did not deliberately or intentionally engage in conduct she knew to be contrary to the employer's standards or interests. Her actions were always with a good-faith belief that she had permission to take the cups. While the employer may have had good cause to discharge her, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons state herein, benefits are allowed.

DECISION:

The representative's decision dated October 26, 2010, reference 01, is hereby affirmed. Ms. Washington was discharged by ABM but misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css