

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L HATCHER
Claimant

APPEAL NO. 08A-UI-06234-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GAS-MART USA INC – EDDY’S
Employer

**OC: 06/01/08 R: 01
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Gas-Mart USA, Inc. filed an appeal from a representative's decision dated June 25, 2008, reference 01, which held that no disqualification would be imposed regarding Jennifer Hatcher's separation from employment. After due notice was issued, a hearing was held by telephone on July 22, 2008. The employer participated by Amber Doss, Manager.

Ms. Hatcher responded to the notice of hearing. However, her number was answered by a machine and a message was left for her at 2:02 p.m. Ms. Hatcher called the Appeals Bureau at approximately 2:10 and the administrative law judge again called her at 2:11 but still received an answering machine message. The employer became disconnected during the process and an attempt was made to reach both parties. The administrative law judge still received an answering machine when attempting to reach Ms. Hatcher. Ms. Hatcher contacted the administrative law judge at approximately 2:22, after the hearing record was closed at 2:19. She indicated that the inability to reach her was due to problems with her cell phone. It was her responsibility to make sure she was in an area where she could receive a signal and that her phone was properly charged. Because she did not establish good cause for not participating at the scheduled time, the administrative law judge declined to reopen the hearing record.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Hatcher was employed by Gas-Mart USA, Inc. from November 17, 2006 until June 2, 2008. She worked full time as a cashier. She was discharged pursuant to a policy that provides for discharge when an individual receives three written warnings.

Ms. Hatcher received her first warning on September 10, 2007, after she failed to lock a door when she closed the store at the end of her shift. She indicated she had forgotten to lock the

door. The employer did not sustain any loss as a result of her failure. There were no further incidents of Ms. Hatcher failing to lock doors as required. The next warning was on October 15, 2007, and was due to tardiness. She had been 15 minutes late on October 12 and 30 minutes late on October 15. Both occasions were due to oversleeping. There were no further attendance issues after the warning.

The decision to discharge Ms. Hatcher was based on two shortages. Her register was \$24.99 short on May 20 and \$19.00 short on May 30. The employer has two registers in the store and there are at least two people working in the store until 9:00 p.m. The employees have the ability to access both registers. The May 30 shortage was due to the fact that a customer disputed what denomination bill she had given Ms. Hatcher to pay for her purchases. Ms. Hatcher should have had her coworker handle customers while she counted down her drawer to determine if she was over. She was also supposed to call a manager. Ms. Hatcher told the employer she did not follow the prescribed steps because the customer was becoming irate. Therefore, she gave the customer change as if she had given a \$20.00 bill to pay for her purchase rather than the \$1.00 Ms. Hatcher indicated. Ms. Hatcher was notified of her discharge on June 2, 2008.

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. Hatcher was discharged because she received three written warnings. Her failure to lock the door on September 10 was an isolated instance of negligence. The tardiness in October was unexcused, as it was due to oversleeping, which is not reasonable grounds for missing time from work. However, there were no attendance issues after the warning of October 15.

Ms. Hatcher's discharge was precipitated by two cash shortages. The cause of the May 20 shortage is unknown. Because at least one other employee had access to the same register she used, the administrative law judge cannot conclude that Ms. Hatcher alone was responsible for the shortage. She was, however, responsible for the shortage on May 30. She used poor judgment in giving in to the irate customer rather than attempting to verify what denomination she had been given. Her failure to follow the correct procedure did not evince a willful or wanton disregard of the employer's standards. Ms. Hatcher was only attempting to placate an irate customer.

After considering all of the evidence, the administrative law judge concludes that substantial misconduct has not been established. Ms. Hatcher heeded the warnings she had received after failing to lock the door and accumulating two periods of unexcused absenteeism. The discharge was prompted by an isolated instance in which she displayed poor judgment. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated June 25, 2008, reference 01, is hereby affirmed. Ms. Hatcher was discharged, but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw