

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIM R COURTNEY
Claimant

APPEAL NO. 10A-UI-02978-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

VEH ENTERPRISES
Employer

OC: 06/28/09
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kim Courtney filed an appeal from a representative's decision dated February 15, 2010, reference 02, which denied benefits based on her separation from VEH Enterprises. After due notice was issued, a hearing was held on April 14, 2010 in Des Moines, Iowa. The hearing was concluded by telephone on April 15, 2010. Ms. Courtney participated personally. The employer participated by Eugene Hiskey, Owner, and Stephanie Nelson, General Manager.

ISSUE:

At issue in this matter is whether Ms. Courtney 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. Courtney was employed by VEH Enterprises from November 6 until December 11, 2009. She was a part-time clerk in the employer's coin laundry and dry cleaning establishment. She was discharged based on an allegation that she stole money from the cash drawer and because of tardiness.

Because money had been missing, the employer decided to "plant" money. An individual brought in items for cleaning and returned to get them at a later date. The customer paid exactly \$37.43 when picking up the items. It was later discovered that the ticket for the items was still present as if they were still in the inventory. The \$37.43 transaction was not on the register's detail tape. The establishment has only one register and there is usually only one person working each shift. When there is an overlap of shifts, two individuals work from the same register drawer during the overlap. The customer who picked up the "planted" clothing indicated that there were two people working when he picked up the items. He was asked to describe the person to whom he gave the money but was not asked to come into the establishment to identify the person for the employer.

In making the decision to discharge, the employer also considered the fact that Ms. Courtney was late to work on some occasions. She was 28 minutes late on November 6, 31 minutes late

on November 23, and 2 minutes late on December 5. She received a written warning regarding tardiness on November 23.

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). It appears that the primary reason Ms. Courtney was discharged was the allegation that she stole \$37.43 from the employer. The employer's evidence fell short of establishing this contention to the satisfaction of the administrative law judge. The employer's evidence consists of the hearsay testimony from the customer who paid the \$37.43. It is clear that he paid this amount to one of two clerks on duty at the time. Ms. Courtney was only one of the two.

The descriptions of Ms. Courtney and the other employee who was present are not so substantially different that it was clear it could only have been Ms. Courtney who received the payment. The cash register's detail tape is of no assistance as either clerk could have failed to properly enter the transaction. Although the employer may be satisfied that it was, in fact, Ms. Courtney who took the money, the administrative law judge is not persuaded.

Ms. Courtney does not dispute that she was late reporting to work on occasion. She received a warning about her tardiness on November 23. The employer presented evidence of only one date thereafter when she was late, December 5. The tardiness of December 5 was by only two minutes. This episode of minimal tardiness is not sufficient to establish excessive unexcused absenteeism after warning.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to satisfy its burden of proof in this matter. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated February 15, 2010, reference 02, is hereby reversed. Ms. Courtney was discharged but disqualifying 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