

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SHELLEY A CROCKER
29318 – 171ST AVE
LONG GROVE IA 52756

TRAC-A-CHEC INC
PO BOX 2764
DAVENPORT IA 52809-2764

Appeal Number: 06A-UI-00706-AT
OC: 12/18/05 R: 04
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Shelley A. Crocker filed a timely appeal from an unemployment insurance decision dated January 11, 2006, reference 01, which disqualified her for benefits. After due notice was issued, a telephone hearing was held on February 6, 2006, with Vice President for Operations Chriss Smith and Supervisor Sherry Simon participating for the employer, Trac-A-Chec, Inc. Although Ms. Crocker provided a telephone number at which she could be contacted, two calls to that number placed at the time of the hearing went unanswered. The claimant did not contact the Appeals Bureau until long after the hearing had ended.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Shelley A. Crocker was employed as a clerical worker by Trac-A-Chec, Inc., from March 29, 2004, until she was discharged October 3, 2005. The final incident leading to the discharge was Ms. Crocker's absence on October 3, 2005. Ms. Crocker had submitted a request for the day off. It had not been approved. Ms. Crocker nevertheless did not report to work.

Ms. Crocker had been absent on several previous occasions and had left early on others. Each of these occasions had been approved in advance by the employer or were for matters of family healthcare. All prior absences has been properly reported.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with her work. It does not.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Excessive unexcused absenteeism is misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to medical reasons, however, is not considered misconduct so long as the employee has properly reported the absence to the employer. See Higgins and 871 IAC 24.32(7). A single unexcused absence is not sufficient to establish excessive unexcused absenteeism. See Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989). Applying these principals of law to the facts of this case, the administrative law judge concludes that benefits must be allowed. While the final absence was unexcused, it was the only unexcused absence leading to the claimant's discharge. Disqualification is not appropriate.

DECISION:

The unemployment insurance decision dated January 11, 2006, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

kjw/kjw