

BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319

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CYNTHIA J JACKSON

Claimant,

and

SHARPNESS INC-GREAT CLIPS

Employer.

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HEARING NUMBER: 07B-UI-09886

EMPLOYMENT APPEAL BOARD  
DECISION

N O T I C E

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.5(2)a**

D E C I S I O N

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member concurring, reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

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Elizabeth L. Seiser

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John A. Peno

## CONCURRING OPINION OF MARY ANN SPICER:

I agree with my fellow board members that the administrative law judge's decision should be affirmed; however, I would make an additional comment. This testimony hinged on credibility. The burden of proof is on the employer to establish disqualifying misconduct. The employer failed to have the firsthand witness present to refute the claimant's vehement testimony that she did not quit, and instead called in sick. (Tr. 4, lines 24-25) The information given to the employer was based on hearsay. Although hearsay is admissible in administrative proceedings, such evidence may not carry much weight in light of what is perceived as credible, firsthand testimony. The administrative law judge attributed more weight to Ms. Jackson's testimony based on credibility. The claimant's last incident of being sick, whether excused or unexcused, under Iowa law is not misconduct. See also, Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982), wherein the court held that absences due to illness, which are properly reported, are excused and not misconduct.

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Mary Ann Spicer

A portion of the employer's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence (documents) were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

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Elizabeth L. Seiser

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Mary Ann Spicer

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John A. Peno