

**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**

**Appeal Number: 04A-UI-01691-CT
OC: 12/21/03 R: 01
Claimant: Respondent (1)**

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.**

**RLENA D CROUSE
101 E VALLEY
RED OAK IA 51566**

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.

**K MART CORPORATION
C/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

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:

K Mart Corporation filed an appeal from a representative's decision dated February 13, 2004, reference 01, which held that no disqualification would be imposed regarding Rlena Crouse's separation from employment. After due notice was issued, a hearing was held by telephone on March 8, 2004. Ms. Crouse participated personally. The employer participated by Christine Adams, Human Resources. Exhibits One through Five were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Crouse was employed by K Mart Corporation from November 24, 1998 until December 26, 2003. She was last employed in replenishment working approximately 24 hours per week. Ms. Crouse was discharged because of her attendance.

All of the absences which contributed to the decision to discharge were properly reported to the employer. They were due to either Ms. Crouse's own illness or that of a child. She had received warnings regarding her attendance, the last of which was on December 21, 2001. The subject of her attendance was also addressed during periodic performance evaluations.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Crouse was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if she was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences.

All of Ms. Crouse's absences are considered excused as they were for reasonable cause and were properly reported to the employer. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. Because the record does not identify any unexcused absences, no disqualification is imposed. While the employer may have had good cause to discharge, conduct which 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). Benefits are allowed.

DECISION:

The representative's decision dated February 13, 2004, reference 01, is hereby affirmed. Ms. Crouse was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/b