

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

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ROSENBOOM MACHINE & TOOL INC  
PO BOX 280  
SHELDON IA 51201

Appeal Number: 06A-UI-01543-ET  
OC: 01-01-06 R: 01  
Claimant: Appellant (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct  
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 20, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 27, 2006. The claimant participated in the hearing. Jack Schreurs, Human Resources Manager; Scott Baumgard, Supervisor; and Karen Pottebaum, Human Resources Generalist, participated in the hearing on behalf of the employer. Employer's Exhibits A through G were admitted into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's address of record on January 20, 2006. The claimant did not receive the decision. The first notice of disqualification occurred when the

claimant spoke to a Workforce representative and was told of the decision denying benefits. The appeal was sent immediately after notice of that decision. Consequently, the administrative law judge concludes the claimant's appeal is timely.

The claimant was employed as a full-time production worker for Rosenboom Machine & Tool from July 25, 2005 to January 3, 2006. On December 2, 2005, the claimant received a written warning because he had been absent 18 days and tardy five times, excluding time off due to a work injury, during 2005 (Employer's Exhibit B). He was suspended for three days and his pay was reduced 25 cents per hour per the employer's policy (Employer's Exhibit B). Additionally, he was required to report any absence to Supervisor Scott Baumgard or two other designees if he was unavailable and also provide a doctor's excuse for any absence (Employer's Exhibit B). On December 22 and 23, 2005, the claimant did not call or report for work (Employer's Exhibits D and E). The claimant was injured at work in August 2005 when a wrench struck him in the chest causing a bruised sternum and consequently he was required to see the company doctor for any ailment resulting from that injury. That doctor was in Sioux City, which is two and one-half hours away. The claimant testified he called the employer December 22 and 23, 2005, and attempted to get permission from the insurance carrier to go to the emergency room for lung irritation caused by chemicals but they did not return his call and his local doctor would not treat him because the claimant believed it was related to his workers' compensation claim. The claimant wrote a note December 29, 2005, stating, "The doctor will not give me a note, he said it was my decision to take the days off because of being sick. All he said was to drink plenty of liquids and get some rest" (Employer's Exhibit C). The employer believes the claimant was treated for the flu and terminated his employment January 3, 2006, for failing to call and report his absences December 22 and 23, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer

has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant maintains he called in to report his absences December 22 and 23, 2005, it is not reasonable to believe the employer failed to record his calls on either day when their records are made contemporaneously with the calls. Additionally, although it was unrealistic to expect the claimant to travel to Sioux City each time he wanted to see a doctor about his workers' compensation injury, it is certainly not clear that his absences December 22 and 23, 2005, were related to the injury rather than being a case of the flu based on the doctor's instructions as relayed in the note written by the claimant. The claimant was absent due to illness December 22 and 23, 2005. The evidence, however, does not support his testimony that he called in to report his illness on the dates in question. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are denied.

#### DECISION:

The January 20, 2006, reference 01, decision is affirmed. The claimant's appeal was timely. He was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

je/s