

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICKY L MARKLEY
Claimant

APPEAL NO. 06A-UI-06706-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROSENBOOM MACHINE & TOOL INC
Employer

**OC: 06/04/06 R: 01
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Rosenboom Machine & Tool, Inc. (Rosenboom) filed an appeal from a representative's decision dated June 26, 2006, reference 01, which held that no disqualification would be imposed regarding Ricky Markley's separation from employment. Due notice was issued scheduling the matter for a hearing to be held on September 18, 2006 in Spencer, Iowa. Because the prior hearing ran over, the parties agreed to hold the hearing by telephone. A hearing was held by telephone on September 27, 2006. Mr. Markley participated personally and offered additional testimony from Tammy Markley and Brandon Poss. Exhibits A and B were admitted on Mr. Markley's behalf. The employer participated by Erin Kuiken, Human Resources; James Trebesch, Supervisor; Dave Ross, Night Shift Supervisor; and Terry Prom, Cell Lead. The employer was represented by Micah Schreurs, Attorney at Law. Exhibits One through Six were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Markley was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Markley was employed by Rosenboom from May 23, 2005 until June 7, 2006 as a full-time production worker. On December 20, 2005, Mr. Markley was given a written warning regarding his attendance. He had missed 16 days since July 1, 2005. A number of his absences coincided with those of Brandon Poss, a coworker who was dating Mr. Markley's sister, who also worked for Rosenboom. Mr. Markley was advised that he would need to provide a doctor's statement for any time missed due to either his own illness or that of another individual. He was advised that a failure to comply with the terms of the warning could result in additional disciplinary action, up to and including discharge.

Mr. Markley was scheduled to work from 6:30 p.m. until 5:00 a.m. on June 1, 2006. He left work at 10:00 p.m. but did not seek permission from the appropriate supervisor. He testified that he began feeling ill at approximately 7:30 p.m. He did not at that time notify any supervisor or team leader that he might need to leave early due to illness. Mr. Markley had Brandon Poss sign his absentee memo but Mr. Poss was not his supervisor or a cell leader and had no authority to allow Mr. Markley to leave work early. He should have sought permission from either Terry Prom or Dave Ross, both of whom were on site. Mr. Markley did not approach Mr. Prom, who was in the break room when Mr. Markley left. Although Mr. Ross was in a meeting, he could have been paged or interrupted while in the meeting. After he left work with Mr. Poss, Mr. Markley went to lunch for approximately one hour and then went home. He did not provide a doctor's statement to verify his illness.

Mr. Markley returned to work on June 5. He was given a written warning for his absence of June 1. Shortly after the lunch break, he was observed at the tool room getting gloves. His supervisor, James Trebesch, directed him back to work. Mr. Markley told him to ask nicely. He was again told to get back to work. Because they were continuing to argue, the matter was taken to Dave Ross' office. Mr. Ross told Mr. Markley to return to work but he continued to debate the issue of Mr. Trebesch's conduct towards him. Mr. Ross told him at least twice that he needed to get back to work. When Mr. Markley remained, he was told to get back to work or go home. The employer considered his conduct of June 5 to be insubordinate. Because of his absence of June 1 and his insubordination of June 5, Mr. Markley was discharged on June 7, 2006.

Mr. Markley filed a claim for job insurance benefits effective June 4, 2006. He has received a total of \$4,752.00 in benefits since filing his claim.

REASONING AND CONCLUSIONS OF LAW:

Mr. Markley was discharged by Rosenboom. 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). The final conduct that prompted the discharge was Mr. Markley's insubordination of June 5. He continued to argue with the supervisor after being told to return to work. If this had been the sole reason for the discharge, the administrative law judge would be inclined to view the incident as an isolated lapse in judgment. However, Mr. Markley had just received a warning that same day and, therefore, knew that his continued employment was in jeopardy.

Mr. Markley received a warning on June 5 after he left work early without proper authorization on June 1. He knew he was to have the permission of either Mr. Ross or Mr. Prom before leaving early. If he began feeling ill at 7:30, he had ample opportunity to alert management that he might need to leave early. The need to leave early was not based on an emergency. Mr. Markley was not so ill that he could not go out and eat lunch for an hour before going home. Given that his leaving was not an emergency, he could have sought out a supervisor before leaving early. He knew that Mr. Poss was not a supervisor and had no authority to allow him to leave early.

Mr. Poss and Mr. Markley often missed work the same days. They both left early on June 1 without seeking approval from the appropriate supervisor. The administrative law judge concludes that the two conspired in preparing and presenting absentee memos in order to leave work early without proper authorization. This conduct, combined with the insubordination of

June 5 is sufficient to establish a substantial disregard of the standards the employer had the right to expect. Therefore, benefits are denied.

Mr. Markley has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated June 26, 2006, reference 01, is hereby reversed. Mr. Markley was discharged for disqualifying 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 job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Markley has been overpaid \$4,752.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

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