

**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**

**TIMOTHY S STEINBACH  
237 S DAVIS  
OTTUMWA IA 52501**

**RUBBERMAID INC  
2800 INDUSTRIAL PARK RD  
CENTERVILLE IA 52544**

**Appeal Number: 05A-UI-08441-AT  
OC: 07-24-05 R: 03  
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 for Misconduct

STATEMENT OF THE CASE:

Timothy S. Steinbach filed a timely appeal from an unemployment insurance decision dated August 15, 2005, reference 01, which disqualified him for benefits. After due notice was issued, a telephone hearing was held August 31, 2005, with Mr. Steinbach participating. Human Resources Manager Bob Phippen participated for the employer, Rubbermaid, Inc. Employer Exhibit One was admitted into evidence.

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: Timothy S. Steinbach was employed by

Rubbermaid, Inc. from March 5, 2002, until he was discharged July 23, 2005. He last worked as a press operator.

Mr. Steinbach had originally been scheduled to report to work at 7:00 a.m. on July 23, 2005. His supervisor, Michelle Devore, gave him permission to come in at 2:00 p.m. He was tardy. He had also been tardy on March 15, June 11, and June 29, 2005. He had been absent without giving a reason on January 3, 2005, and March 8, 2005. He received warnings that his attendance was unacceptable on March 18, May 1, and June 29, 2005.

#### 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 his employment. It does.

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, a concept which includes tardiness, is misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The evidence in this record establishes six incidents in just over six months. This number of occurrences, especially in the context of three warnings during the same period of time, is sufficient to establish excessive unexcused absenteeism. Benefits must be withheld.

#### DECISION:

The unemployment insurance decision dated August 15, 2005, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

kjw/kjw