

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRANDON W POSS**

Claimant

**APPEAL NO. 06A-UI-06705-C**

**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 Brandon Poss' separation from employment. After due notice was issued, a hearing was held on September 18, 2006 in Spencer, Iowa. Mr. Poss participated personally and offered additional testimony from Tammy Markley and Ricky Markley. The employer participated by Erin Kuiken, Human Resources; Dave Ross, Night Shift Supervisor; Terry Prom. Cell Lead; and Scott Baumgard, Day Shift Supervisor. 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. Poss 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. Poss was employed by Rosenboom from February 28, 2005 until June 5, 2006 as a full-time production worker. He was discharged because of his attendance. There were two occasions on which the employer felt he was "AWOL" and, therefore, discharged him.

On October 28, 2005, Mr. Poss made a written request to be off work from November 29 through December 10 to accompany his girlfriend to Las Vegas for a modeling show. His girlfriend, Tammy Markley, was also employed by Rosenboom. The request was denied. The modeling show was from December 2 through December 4. On December 1, both Mr. Poss and Ms. Markley reported that they would be absent due to illness. On December 5, they both reported that they would be absent due to a family emergency. The emergency was stated to be due to Mr. Poss' grandmother having bypass surgery. On December 8, the supervisor requested written verification to substantiate the family emergency. The request was reiterated

on December 12 but no documentation was ever provided. As a result, Mr. Poss was considered to be "AWOL" on December 5, 2005.

Mr. Poss was notified of the "AWOL" in a document dated December 20, 2005. The document imposed a three-day suspension. Mr. Poss was notified that he would have to present a doctor's excuse if he was again absent due to his own illness or that of another. He was also notified that he would need to present documentation of the need to be absent for any other reason during the next six months. Mr. Poss was advised that the failure to adhere to the conditions as outlined could result in further disciplinary action, including termination of the employment.

On June 1, Mr. Poss was scheduled to work from 6:30 p.m. until 5:00 a.m. At approximately 10:00 p.m., he presented an absentee memo to Terry Prom indicating he wanted to leave early. He placed the memo in front of Mr. Prom in the break room and Mr. Prom asked him what it was. Mr. Poss told him to read it and walked away. He did not wait for a response to the request to leave. Mr. Poss' request to leave early should have been presented to either Dave Ross or Dan Tirevold, both of whom were in the building at the time. They were in a meeting but were available. Mr. Poss made no attempt to reach either of them before leaving. Because he did not seek permission from the appropriate person before leaving and because he did not present documentation of the need to be absent, Mr. Poss was considered "AWOL" on June 1. As a result, he was discharged on June 5, 2006, his next scheduled workday.

Mr. Poss filed a claim for job insurance benefits effective June 4, 2006. He has received a total of \$4,800.00 in job insurance benefits since filing his claim.

#### **REASONING AND CONCLUSIONS OF LAW:**

Mr. Poss 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). Mr. Poss was discharged because he was considered to be "AWOL" on December 5, 2005 and June 1, 2006. He was denied permission to have time off in December of 2005 to be with his girlfriend in Las Vegas while she competed in a modeling show from December 2 through December 4. Both he and his girlfriend called in sick for December 1, the day before the show. Both called in a family emergency for December 5, the day following the show. The administrative law judge is not persuaded that this was merely coincidental.

Mr. Poss was given the opportunity to submit documentation of the family emergency that necessitated his absence of December 5. If his grandmother was, in fact, having bypass surgery, it seems that some medical professional would have been able to provide proof of this fact. The fact that he made no effort to obtain verification of the family emergency convinces the administrative law judge that Mr. Poss was not absent due to a family emergency on December 5. He took time off work for personal reasons after permission to be gone had been denied.

Mr. Poss knew as of December 20, 2005 that any absences due to illness had to have medical verification. He also knew the employer's policy required him to have permission from a supervisor before leaving early. Mr. Poss did not try to obtain permission from his supervisor before leaving on June 1. He gave the absentee memo to Terry Prom but did not wait for a response before leaving. It appears that Mr. Poss took advantage of the fact that the people he needed to get permission from were in a meeting. The administrative law judge is not satisfied

that Mr. Poss was ill on June 1. He left work with his girlfriend and her brother and then went to have lunch before going home. If he was too ill to work, one would expect him to go directly home and not out to eat beforehand. Furthermore, he did not provide proof that he was ill as required by the notice of December 20. The fact that he was seeking to use personal time does not alter the fact that his leaving early on June 1 was stated to be due to illness.

The administrative law judge concludes that Mr. Poss was dishonest with respect to both the December 5 and the June 1 absences. Therefore, both absences are considered unexcused. Given the dishonesty, the administrative law judge concludes that the two unexcused absences are sufficient to establish excessive unexcused absenteeism within the meaning of the law. Moreover, Mr. Poss' conduct in being dishonest with the employer with respect to both absences constituted a substantial disregard of the standards an employer has the right to expect. For the reasons stated herein, it is concluded that disqualifying misconduct has been established. Therefore, benefits are denied.

Mr. Poss 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. Poss was discharged for misconduct in connection with his employment. 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. Poss has been overpaid \$4,800.00 in job insurance benefits.

---

Carolyn F. Coleman  
Administrative Law Judge

---

Decision Dated and Mailed

cfc/pjs