

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVEN R MILLER**  
Claimant

**APPEAL NO. 07A-UI-00681-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DONALDSON COMPANY INC**  
Employer

**OC: 12/10/06 R: 02  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Steven Miller filed an appeal from a representative's decision dated January 10, 2007, reference 01, which denied benefits based on his separation from Donaldson Company, Inc. After due notice was issued, a hearing was held by telephone on February 5, 2007. Mr. Miller participated personally. The employer participated by Diana Duncan, Human Resources Administrator, and was represented by Marcy Schneider of TALX Corporation.

**ISSUE:**

At issue in this matter is whether Mr. Miller 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. Miller was employed by Donaldson Company, Inc. from February 9, 1987 until November 29, 2006. He was last employed full-time as a turret press operator. He was discharged because of his attendance. Employees are required to report absences by no later than one hour after the shift starts.

Mr. Miller received a written warning regarding his attendance on October 27, 2005. On January 20, January 25, February 14, and March 10, 2006, Mr. Miller called several hours after the start of his shift to report that he would be absent. On March 6, he called to report that he would be late but did not appear for work or re-contact the employer. Mr. Miller received another written warning regarding his attendance on March 14, 2006. He called late to report absences on March 27, March 29, April 7, June 19, August 3, August 15, and August 22. These reports were also made several hours after the start of his shift. He did not report for work or contact the employer on September 20.

Mr. Miller was to be at work at 6:30 a.m. on October 13 but did not call to report his absence until 12:18 p.m. The employer met with him on October 16 and suspended him for three days. He was advised that he was receiving his final warning and further incidents would result in his immediate discharge. There were no further incidents until November 28. He was to be at work

at 6:30 a.m. but did not report his intended absence until 10:22 a.m. Mr. Miller was notified of his discharge on November 29, 2006.

Mr. Miller suffers from sleep apnea. He usually sets at least two alarm clocks and two alarms on his cell phone. He usually goes to bed between 10:00 p.m. and 10:30 p.m. and gets up one hour before he is to be at work. He was usually scheduled to be at work at either 5:30 a.m. or 6:30 a.m.

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

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). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. It appears undisputed that Mr. Miller failed to timely report absences on a number of occasions. The administrative law judge must determine if he had good cause for his failure.

Mr. Miller contended that his sleep apnea prevented him from giving timely notice of his intended absences. There was almost always at least a four-hour delay in reporting the absences. The administrative law judge is not satisfied that the sleep apnea would account for such lengthy delays. There was no medical evidence submitted to substantiate that sleep apnea was the cause of the delays. Mr. Miller was going to bed between 10:00 p.m. and 10:30 p.m. and getting up at either 4:30 a.m. or 5:30 a.m., depending on the start of his shift. Therefore, he was only getting, at most, 6.5 or 7.5 hours of sleep, assuming he slept through the night. He could have gone to bed earlier when he realized he was being disciplined for not reporting his absences timely. The administrative law judge believes Mr. Miller had some ability to control his situation, his sleep apnea notwithstanding. Furthermore, he was able to go from October 16 until November 28 without any late calls.

The administrative law judge concludes that Mr. Miller's failure to give timely notice of his absences was not for good cause. He called late on at least 13 occasions in 2006. His failure constituted a substantial disregard of the standards he knew the employer expected of him. As such, it constitutes disqualifying misconduct within the meaning of the law. Accordingly, benefits are denied.

#### **DECISION:**

The representative's decision dated January 10, 2007, reference 01, is hereby affirmed. Mr. Miller 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.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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