

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY C MILLER
Claimant

APPEAL NO. 07A-UI-06667-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

X-L SPECIALIZED TRAILERS INC
Employer

**OC: 06/10/07 R: 04
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Troy Miller filed an appeal from a representative's decision dated June 27, 2007, reference 01, which denied benefits based on his separation from X-L Specialized Trailers, Inc. After due notice was issued, a hearing was held by telephone on July 23, 2007. Mr. Miller participated personally. The employer participated by Greg Bolles, Human Resources Administrator.

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 X-L Specialized Trailers, Inc. from July 31, 2006 until June 7, 2007 as a full-time welder. At the time of hire, employees are given a bank of time to be used to cover absences. Any absences beyond the banked time, is considered unexcused.

Mr. Miller was notified on February 21, 2007 that he had zero hours of time to use for absences. He did not have any further absences until June 7. He was scheduled to be at work at 6:00 a.m. but did not report until approximately 12:00 noon. He was late because he had been arrested the night before and was in jail. His mother called before the start of his shift to report the intended absence. Because he did not have leave time to cover the absence of June 7, Mr. Miller was discharged. Attendance was the sole reason for the separation. All of his absences prior to February 21, 2007 were considered excused by the employer.

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. Tardiness in reporting to work is considered a limited absence from work.

The only unexcused absence established by the evidence is that of June 7, 2007, when Mr. Miller missed at least one-half day of work. The absence is unexcused, as it was due to a purely personal matter, his incarceration. He was in the employment for 11 months. One unexcused absence over 11 months is not excessive. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, the administrative law judge concludes that the employer has failed to establish excessive unexcused absenteeism as that term is defined by law. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated June 27, 2007, reference 01, is hereby reversed. Mr. Miller was discharged, but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw