

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH E VAN EGDON
Claimant

APPEAL NO. 11A-UI-02261-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JODI CONNOLLY SALON INC
Employer

**OC: 12/19/10
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Kenneth Van Egdon, filed an appeal from a decision dated February 14, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 22, 2011. The claimant participated on his own behalf. The employer, Jodi Connolly Salon, Inc. (Connolly), participated by Owner Jodi Connolly.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Kenneth Van Egdon was employed by Connolly from October 10, 2007 until December 19, 2010 as a full-time stylist. He received a copy of the employee handbook at the time of hire. One of the policies prohibits the possession of alcohol on the premises and further states violation of the policy is grounds for disciplinary action up to and including discharge.

Mr. Van Egdon received verbal warnings for attendance problems on June 14 and October 23, 2010. He received a final written warning for the same problem on November 15, 2010, as well as a five-day suspension.

On December 18, 2010, the claimant received a bottle of wine from a client. After he was off duty he opened the bottle of wine in the employee break room and offered a drink to another employee, Nikki. She declined and then notified the employer. The claimant was discharged the next day by Owner Jodi Connolly.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The claimant had been advised his job was in jeopardy as a result of policy violations, and had even received a five-day suspension. In spite of these warnings he again violated company policy by having alcohol on the premises. The wine was a gift but that does not entitle the claimant to open the bottle on company premises and offer drinks to other employees who were on duty. This is a violation of a known company policy and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of February 14, 2011, reference 01, is affirmed. Kenneth Van Egdon is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css

