

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRY W MINTER
Claimant

APPEAL NO. 14A-UI-01237-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BELLE/SIOUX CITY RIVERBOAT
Employer

**OC: 01/05/14
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Jerry Minter, filed an appeal from a decision dated January 28, 2014, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 25, 2014. The claimant participated on his own behalf. The employer, Belle Sioux City Riverboat (Belle), participated by Human Resources Business Partner Donna Beck-Willems.

ISSUE:

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

FINDINGS OF FACT:

Jerry Minter was employed by Belle from October 9, 2012 until June 6, 2013 as a full-time heavy housekeeper. He received the employer's drug and alcohol policy at the time of hire. The policy is zero tolerance and an employee who is at work under the under influence of drugs or alcohol is subject to immediate discharge.

On June 4, 2013, the claimant's supervisor Tracy Stoneking, suspected he was under the influence of alcohol. She notified her supervisor of her suspicions and the matter was referred to security and human resources. An on-site agent for the Department of Criminal Investigation (DCI) was assigned to interview Mr. Minter. Later the agent administered a breathalyzer test. The results were above the legal limit for intoxication. The claimant was suspended and sent home in a cab. He admitted to being under the influence of alcohol while at work in violation of the policy.

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 was aware of the policy which prohibited coming to work under the influence of drugs or alcohol. He freely admitted he was drunk when he arrived at work on June 4, 2013, but apparently felt the zero tolerance aspect of the policy should be waived in his case and he should only have been suspended.

The employer has the obligation to provide a safe work environment for all employees and the claimant working while intoxicated risked not only his safety but that of co-workers and guests. Whether his work record and attendance was good does not matter. The policy is zero-tolerance and his decision to come to work while intoxicated is a violation of the duties and responsibilities the employer has the right to expect of an employee. The claimant is disqualified.

DECISION:

The unemployment insurance decision dated January 28, 2014, reference 01, is affirmed. Jerry Minter is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs