

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDALL C ANDREWS
Claimant

APPEAL NO. 08A-UI-04413-D

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLORIST DISTRIBUTING INC
Employer

**OC: 04/06/08 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Randall C. Andrews (employer) appealed a representative's April 29, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Florist Distributing, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on May 19, 2008. The claimant participated in the hearing. Lenny Houts appeared on the employer's behalf and presented testimony from two other witnesses, Vicky Keltner and Mike Jones. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

After previously working for about a year on a part time basis, the claimant started working for the employer full time on February 8, 1999. He worked as a driver in the employer's floral supply business. His last day of work was April 11, 2008. The employer discharged him on that date. The stated reason for the discharge was repeated failing to follow procedures to ensure items listed for delivery were not left behind.

The claimant's normal work schedule was 7:00 a.m. to 4:00 p.m., Monday through Friday. When he arrived for work, the employer would have a truck manifest for him from which he was to load his truck and make his deliveries for the day. This process had been given stricter enforcement since approximately July 2007. Since that time, the claimant had been given approximately 13 verbal warnings for lack of attentiveness to duties, including approximately five or six verbal warnings for failing to check that he had all items listed on the manifest loaded onto the truck before leaving. On February 29, 2008 the employer gave the claimant a written warning for leaving items behind due to failing to verify that all items from the manifest were loaded on the truck before leaving, and on April 1, 2008 the employer gave the claimant a final warning for again leaving items behind due to failing to verify that all items from the manifest were loaded on the truck before leaving.

On April 10, 2008 there was a package listed on the claimant's manifest that the claimant failed to load on to his truck, and left the item behind when he left for the day on his deliveries. The package was discovered later during the day. As a result of this final occurrence after the prior warnings, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

While the claimant may not have had an explicit intent to forget and leave the package behind, his repeated failure to take remedial action after prior warnings that would have prevented reoccurrence shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's April 29, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of April 11, 2008. This disqualification continues until the

claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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