

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WINSTON A MILLS**  
Claimant

**APPEAL NO. 09A-UI-17699-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FLORIST DISTRIBUTING INC**  
Employer

**Original Claim: 10/25/09  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Florist Distributing, Inc. filed a timely appeal from an unemployment insurance decision dated November 18, 2009, reference 01, that allowed benefits to Winston A. Mills. After due notice was issued, a telephone hearing was held December 14, 2009, with Mr. Mills participating. Assistant Vice President Mike Jones and General Manager Lenny Houts participated for the employer.

**ISSUE:**

Was the claimant discharged for misconduct in connection with his employment?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Winston A. Mills was employed by Florist Distributing, Inc. from September 10, 2007, until he was discharged October 28, 2009. He last worked as a hard goods selector. The final incident leading to the discharge had occurred on the previous day. Picking an order for a funeral home, Mr. Mills forgot one item. As a result, the remainder of the order had to be delivered specially to the funeral home. Mr. Mills was allowed to work for approximately two hours on the date of discharge, performing his normal duties, before he was discharged by General Manager Lenny Houts. Mr. Houts told Mr. Mills that although Mr. Mills was improving his accuracy, he still made too many mistakes. Mr. Mills had received two prior warnings for errors in orders, but those warnings had occurred in April and June of 2008. Mr. Mills missed a general meeting that Mr. Houts had called to emphasize accuracy of orders because he was making a delivery for the company. Mr. Houts gave Mr. Mills a set of the notes from the meeting but did not speak specifically about it with him.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does not.

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.

While repeated acts of carelessness may constitute misconduct, isolated instances of poor performance, while potentially sufficient to justify discharge, are not sufficient to establish disqualifying misconduct. The evidence in the record establishes that Mr. Mills made an error in filling an order on the day before his discharge. Nevertheless, it also establishes that he was allowed to work for several hours on the following day and that Mr. Houts acknowledged his improvements in his skills. While Mr. Mills' skill level may not have been sufficient for the employer, the evidence establishes that Mr. Mills was making an effort to improve and that that effort was recognized by management. Under these circumstances, no disqualification may be imposed.

**DECISION:**

The unemployment insurance decision dated November 18, 2009, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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