

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MOHAMED S ABDIRIZAK
Claimant

APPEAL NO. 07A-UI-06860-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 06/10/07 R: 02
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Mohamed Abdirizak filed an appeal from a representative's decision dated July 11, 2007, reference 01, which denied benefits based on his separation from Wal-Mart Stores, Inc. After due notice was issued, a hearing was held by telephone on August 14, 2007. Mr. Abdirizak participated personally and was represented by Shellie Mackel, Attorney at Law. Magdy Salama participated as the interpreter. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Abdirizak was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Abdirizak was employed by Wal-Mart from September of 2003 until May 22, 2007. He was employed full time as a sales associate. He was discharged based on an allegation of theft.

On May 2, Mr. Abdirizak presented a prescription to the Wal-Mart pharmacy when he arrived at work at 4:00 p.m. The prescription was for medication he needed for his diabetes. He had not taken diabetes medicine that day because he had run out and needed to have the prescription refilled. He picked up the medication at 6:00 p.m., his break time. He was asked if he wanted to pay at the pharmacy counter or at a front register and he chose to pay up front. Because he was feeling dizzy and weak from not having taken medication that day, Mr. Abdirizak went directly to the break room. He took the prescribed medication for his diabetes and placed the pill bottle in his lunch box. After his 15-minute break, he returned to work and completed his shift. He failed to pay for the medication before leaving the workplace on May 2.

Mr. Abdirizak did not remember that he had not paid for the medication until contacted by the employer on May 22. He made the payment on that date. He had been having his prescriptions filled at Wal-Mart since he began the employment in 2003. He purchased medication on a monthly basis and had never failed to pay for it in the past. The employer

considered Mr. Abdirizak's actions theft and, therefore, discharged him on May 22, 2007. The above matter was the sole reason for the separation.

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). Mr. Abdirizak was discharged because he removed merchandise from the store without first making payment. The employer contended that his actions constituted theft, whereas Mr. Abdirizak contended that it was an oversight caused by illness.

Mr. Abdirizak had been purchasing medication from Wal-Mart on a monthly basis for over three years. There were no allegations that he ever failed to pay for medication in the past. His testimony that he was weak and dizzy on May 2 due to lack of medication was not refuted on the record. Given the fact that he was ill, he may well have forgotten that he had not yet paid for the medication. Any doubt as to his intentions is resolved in Mr. Abdirizak's favor. Based on his history of purchasing medications at work and always making payment, the administrative law judge is inclined to believe that the incident of May 2 was an oversight rather than an intent to steal the medication.

For the reasons stated herein, the administrative law judge concludes that the employer has failed to sustain its burden of proving disqualifying misconduct. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated July 11, 2007, reference 01, is hereby reversed. Mr. Abdirizak was discharged, but 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