

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**LISA L GALE
2024 LILLIE AVE
DAVENPORT IA 52804**

**WAL-MART STORES INC
C/o THE FRICK COMPANY
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 05A-UI-06509-H2T
OC: 05-22-05 R: 04
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 10, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 11, 2005. The claimant did participate. The employer did participate through Jason Dennis, Co-Manager and Roger Combs, Co-Manager (representative). Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a cashier/service desk associate full time beginning August 11, 2004 through May 18, 2005 when she discharged.

On or about May 13, 2005 the employer discovered that the claimant had been taking the prescription medication of another employee. The other employee, Michelle, provided the medication to the claimant in the employer's break room while she and the claimant were on a break from work. While the employer believes the medication the claimant was taking was vicodin, the claimant alleges it was Xanax. In either event the claimant admitted that she was taking medication from another employee which required a prescription to dispense. The claimant alleges that she did not know that taking Xanax required a prescription. The claimant was given a copy of the employer's handbook or policy regulations that specifically prohibit taking another employee's prescription medication. The claimant took the medication on three or four separate occasions and eventually paid her coworker \$10.00 for the pills. The claimant was allegedly taking the medication for headaches.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

An employer has a right to expect employees to conduct themselves in a certain manner. Employees are expected to comply with the employer rules and regulations. The employer specifically prohibits employees from taking medications that are prescribed for others. Taking prescription medication without a prescription from a doctor is also against Iowa State Law. The claimant was offered a pill for a headache by a coworker. A reasonable person would inquire as to the nature of the pill before ingesting it, particularly if the coworker were not a medical professional. The administrative law judge concludes that claimant knew or should have known that the medication she was taking was not intended for her and that she had no right to take it. The claimant disregarded the employer's rights by taking prescription medication that belonged to another employee in contravention of the employer's explicit policy against the same. While the incidents happened in March 2005 the employer did not discover the behavior until May 2005. The employer acted quickly after learning of the conduct, thus the claimant was discharged for a current act of misconduct. The claimant's disregard of the employer's rights and interests is misconduct. As such, the claimant is not eligible to receive unemployment insurance benefits. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The June 10, 2005, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,716.00.

tkh/pjs