

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DWAYNE L WIGNALL
Claimant

APPEAL NO. 12A-UI-11457-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 08/26/12
Claimant: Appellant (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Dwayne Wignall filed a timely appeal from the September 14, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 22, 2012. Mr. Wignall did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Jennifer Nefzger, Asset Protection Manager, represented the employer. Exhibits One through Five were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dwayne Wignall was employed by Wal-Mart as an unloader from February 2011 and last performed work for the employer on August 2, 2012. On that day, the employer suspended Mr. Wignall in response to a credible report from another employee that Mr. Wignall had been sharing his prescription painkiller medication, hydrocodone, with other employees in the workplace. The employer conducted an investigation that included interviewing all of the employees in question, including Mr. Wignall who admitted to sharing his prescription medication on multiple occasions and with multiple employees. The employer's investigator reported her findings and the matter moved up the employer's chain of command until the August 15, 2012, when the employer's corporate office gave the directive to discharge Mr. Wignall from the employment.

The employer had a written drug free workplace policy that prohibited unlawful distribution of prescription drugs to any other person or group of persons. Mr. Wignall had signed his acknowledgement of the policy at the start of his employment.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly

be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

It is illegal in the State of Iowa to distribute prescription medication without a license to persons other than the person to whom the medication was prescribed. See Iowa Code section 124.401. The evidence in the record establishes that Mr. Wignall engaged in misconduct in connection with the employment by illegally sharing his prescription painkiller medication with other employees in the workplace in violation of the employer's written policy. The employer took a reasonable amount of time, from the August 2 initial report to the employer to the August 15, 2012, to investigate and to decide to discharge Mr. Wignall from the employment. In other words, the evidence establishes a current act for unemployment insurance eligibility purposes.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Wignall was discharged for misconduct. Accordingly, Mr. Wignall is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

DECISION:

The Agency representative's September 14, 2012, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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