

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KELLI K DAVIS**  
Claimant

**APPEAL NO. 08A-UI-03660-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GRINNELL REGIONAL MEDICAL CENTER**  
Employer

**OC: 03/23/08 R: 02  
Claimant: Appellant (1)**

Section 96.5(2) – Discharge

**STATEMENT OF THE CASE:**

The claimant, Kelli Davis, filed an appeal from a decision dated April 11, 2008, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued,. a hearing was held by telephone conference call on April 30, 2008. The claimant participated on her own behalf. The employer, Grinnell Regional Medical Center (GRMC), participated by Vice President Dave Ness, Human Resources Manager Deb Nowachek, Vice President Todd Nelson and Employee Relations Specialist Vilene Savage.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Kelli Davis was employed by GRMC from April 1, 2002 until March 21, 2008, as a full-time departmental secretary. She worked 8:00 a.m. until 4:30 p.m., Monday through Friday. In April and June 2007 she was placed on “action plans” to address her chronic tardiness. The final action plan was instated on December 26, 2007. It required Ms. Davis to call in prior to the start of the shift if she was going to be tardy or absent, and to speak only to Vice President Todd Nelson, or leave him a voice mail.

On March 20, 2008, Ms. Davis called in at 8:30 a.m. to say she would be late and arrived at 9:00 a.m. She had overslept. She was discharged by Human Resources Manager Deb Nowachek and Vice President Dave Ness on March 21, 2008.

## 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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant had been advised her job was in jeopardy as a result of her chronic tardiness. In spite of the warning she was tardy on March 20, 2008, without giving proper notice to the employer. The reason for the tardiness was oversleeping. Matters of purely personal consideration, such as oversleeping, are not considered an excused absence. Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). The claimant is disqualified.

**DECISION:**

The representative's decision of April 11, 2008, reference 01, is affirmed. Kelli Davis is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

---

Bonny G. Hendricksmeier  
Administrative Law Judge

---

Decision Dated and Mailed

bgh/css