

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NORAN L DAVIS**  
Claimant

**APPEAL NO. 10A-UI-14011-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALEGENT HEALTH**  
Employer

**OC: 09/05/10**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Noran Davis, filed an appeal from a decision dated October 1, 2010, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 22, 2010. The claimant participated on his own behalf. The employer, Alegent Health, participated by Human Resources Business Partner Jen Smith and Laboratory Coordinator Elizabeth Jabs and was represented by TALX in the person of Beth Crocker

**ISSUE:**

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

**FINDINGS OF FACT:**

Noran Davis was employed by the employer from February 2, 2008 until September 7, 2010 as a full-time phlebotomist. Laboratory Director Melissa Hanlon had verbally counseled him several times for his failure to answer the Spectralink phone, which is used to notify the phlebotomist on duty if a blood draw is needed. She also discussed his low statistics and emphasized he was not doing his share of the blood draws. The claimant received a final written warning on July 21, 2010, which notified him his job was in jeopardy as a result of his failure to answer the Spectralink calls and his low numbers. After the final warning, Ms. Hanlon gave him another verbal warning on August 21, 2010, and emphasized he needed to communicate with his co-workers when he would leave the building.

On September 1, 2010, Anna, the phlebotomist who was going off duty, saw the claimant sitting in his car in the parking lot around 10:30 p.m. A STAT call had come in from the emergency room at 10:15 p.m. for a blood draw, but Mr. Davis did not respond to the call. He entered the building again at 10:27 p.m. and finally did the blood draw at 10:48 p.m. STAT calls from the emergency room are to be answered within 10 minutes per protocol.

Anna notified the employer of what she had seen and Ms. Hanlon did an investigation. She checked with the security system which records the times employees use their badge to enter

the building, though it does not register when an employee leaves the building. On the night of September 1 and into September 2, 2010, the claimant entered the building six times other than his original arrival time. He was out of the building with his girlfriend dealing with personal issues. He maintained he was available through the Spectralink phone, but as a phlebotomist, he has other duties in the laboratory he is to be doing if there are no blood draws to be done.

On September 7, 2010, Ms. Hanlon notified the claimant he was being discharged for failing to perform his job duties.

### **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 claimant had been advised his job was in jeopardy as a result of his failure to perform his job duties as required. He had failed to notify his co-workers when he would be leaving the building and the final incident shows he left the building six times over the course of his shift without proper notice. In addition, while he was outside dealing with personal issues with his girlfriend, he was not in the lab performing his other job duties. He also failed to respond to the STAT call from the emergency room, causing a delay of over half an hour.

Mr. Davis forwarded several explanations, none of which were sufficient to explain his conduct on the shift which began September 1, 2010. Whatever his personal problems were, the time to discuss them was not while he was on the clock and should have been attending to his job

duties. His assumption that others were available to do his work for him is not justified nor substantiated, since he did not notify his co-workers he would be unavailable. In any event, the other staff have the right to expect Mr. Davis was present and on the clock and should be performing his own work rather than having others do it for him while he attended to personal matters.

The claimant failed to do his work as required. This is a violation of the duties and responsibilities the employer has the right to expect of an employee. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

**DECISION:**

The representative's decision of October 1, 2010, reference 02, is affirmed. Noran Davis is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw