

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CINDY J KELLY**  
Claimant

**APPEAL NO. 12A-UI-03104-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GRANDVIEW HEIGHTS INC**  
Employer

**OC: 02/12/12**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Cindy Kelly, filed an appeal from a decision dated March 22, 2012, 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 11, 2012. The claimant participated on her own behalf. The employer, Grandview Heights, participated by Administrator Chris Wolf..

**ISSUE:**

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

**FINDINGS OF FACT:**

Cindy Kelly was employed by Grandview from February 9, 1998 until February 7, 2012 as a full-time director of medical records and central supply. At the time she was hired Ms. Kelly received, and signed for, the code of conduct for employees. One of the provisions informs employees that personal business is not to be done on company time. It is grounds for immediate discharge.

On February 6, 2012, a charge nurse who was off duty received a message via Facebook from Ms. Kelly. She had been playing games while on duty and had sent out a message to everyone on her Facebook list. The charge nurse informed DON Joey Oxenfield who in turn notified Administrator Chris Wolf. The next day the charge nurse brought in a copy of the Facebook page to Ms. Wolf. The Administrator then spoke with Ms. Kelly who admitted she had been playing games on Facebook while on duty. She was discharged for violation of a known company rule.

**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 policy is specific that an employee may be discharged for doing personal things while on duty. There are few things more personal than playing games and contacting others via Facebook. It has no business application whatsoever. The claimant violated a known company rule, and was on the clock while not doing her assigned work. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and the claimant is disqualified.

**DECISION:**

The representative's decision of March 22, 2012, reference 01, is affirmed. Cindy Kelly is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

---

Bonny G. Hendricksmeier  
Administrative Law Judge

---

Decision Dated and Mailed

bgh/css