

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

MINDY C SHEA
602 SE GRANT #4
ANKENY IA 50021

PREFERRED MARKETING INC
BROKEN ARROW PROMOTION
4133 MERLE HAY RD
DES MOINES IA 50310-1316

Appeal Number: 04A-UI-02226-CT
OC: 01/25/04 R: 02
Claimant: Respondent (1)

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 for Misconduct

STATEMENT OF THE CASE:

Preferred Marketing, Inc. filed an appeal from a representative's decision dated February 18, 2004, reference 01, which held that no disqualification would be imposed regarding Mindy Shea's separation from employment. After due notice was issued, a hearing was held by telephone on March 18, 2004. Ms. Shea participated personally. The employer participated by Glenda Elliott, Sales Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Shea was employed by Preferred Marketing, Inc. from

July 1, 2003 until January 22, 2004. She worked full time in sales. In late October, Ms. Shea received a flag from a customer with the United States Air Force stationed in Afghanistan. She had worked with the customer on an order and he wanted to send her something for her efforts. He initially asked for her home address but she declined to give it. He sent the flag to her at the employer's business address and included a certificate of authenticity directed to "Mindy Shea and the Sales Support Team." The flag had been flown over Kandahar Airfield in Afghanistan on October 13, 2003. Ms. Shea did not attempt to hide the fact that she felt the flag was hers and that she was taking it home. A copy of the certificate was posted at the office.

Ms. Shea's supervisor was aware that she had taken the flag home but did not indicate to her that she had done anything inappropriate. The matter became an issue when the owner of the business questioned the whereabouts of the flag. When notified that Ms. Shea had taken it home, the decision was made to discharge her. The above matter was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Shea was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Shea was discharged based on an allegation that she stole property belonging to the employer. She had a good-faith belief that the flag was intended for her personally and not the business. Her belief was based on the customer's indication that he intended to send her a gift for working on his order. The only reason the flag was sent to the business address was because Ms. Shea declined to give out her home address. Moreover, the flag was contained in a package addressed to Ms. Shea by name.

The entire sales staff, including Ms. Shea's supervisor, was aware that she had taken the flag home. They knew of this immediately upon receipt of the flag. Ms. Shea was not attempting to hide her actions. Her conduct was not that of one who knows she has engaged in theft. At most, her actions might constitute a good-faith error in judgment. Conduct so characterized is exempt from the definition of misconduct. See 871 IAC 24.32(1). For the reasons stated herein, the administrative law judge concludes that the employer has failed to satisfy its burden of proving disqualifying misconduct. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated February 18, 2004, reference 01, is hereby affirmed. Ms. Shea was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/s