

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHELLEY L PETERSON**  
Claimant

**APPEAL NO. 12A-UI-11525-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANTAGE SALES & MARKETING LLC**  
Employer

**OC: 08/26/12**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Advantage Sales & Marketing LLC filed a timely appeal from a representative's decision dated September 13, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 22, 2012. Claimant participated. The employer participated by Ms. Cheryl Rodermond, Hearing Representative and witness Ms. Tracy Weber, Supervisor.

**ISSUE:**

The issue in this matter is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Shelley Peterson was employed by Advantage Sales & Marketing LLC from February 15, 2009 until August 16, 2012 when she was discharged from employment. Ms. Peterson worked as a full-time district sales manager. Her immediate supervisor was Kimberly Newton.

A decision was made to terminate Ms. Peterson from her employment with Advantage Sales & Marketing LLC based upon reports that the claimant had violated the company's and their client's visitor policy by allowing an unauthorized individual to perform services at a grand opening event without the authorization of Advantage Sales & Marketing or its client. It was the employer's belief that Ms. Peterson's boyfriend had been working at the event with Ms. Peterson's knowledge although her boyfriend was not an employee of Advantage Sales & Marketing. It was the employer's further belief that the claimant's boyfriend had some part in misappropriating some food items.

Because the claimant was being investigated by the company's human resource department for two other matters a decision was made to terminate Ms. Peterson from her employment based upon the employer's belief that she had violated policy.

During the event in question Ms. Peterson had been given a ride to the event by her boyfriend and believed that the boyfriend was merely associating with other individuals who were at the grand opening. The claimant did not witness her boyfriend performing services for Advantage Sales & Marketing at the event nor did the claimant have any knowledge of any misappropriation of property by that individual.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is not.

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 insurance benefits. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance 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).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in a disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In this matter the claimant participated personally and provided sworn testimony denying that she had violated company policy by allowing her boyfriend to work as an Advantage Sales & Marketing worker at a grand opening event for a client. The claimant denied having any knowledge of her boyfriend acting in that capacity or having any knowledge of any misappropriation by that individual of the property of the client. In contrast the evidence in support of the employer is hearsay in nature. Although hearsay is admissible in administrative proceedings it cannot be accorded the same weight as sworn direct testimony. The administrative law judge finds the claimant's testimony to be credible and finds the testimony to not be inherently improbable.

While the decision to terminate Ms. Peterson may have been a sound decision from a management viewpoint the evidence in the record is not sufficient to establish disqualifying misconduct. Unemployment benefits are allowed providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated September 13, 2012, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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