

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATTY KEHDE
Claimant

APPEAL NO. 13A-UI-10152-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOLO OIL CO INC
Employer

OC: 08/04/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Patty Kehde (claimant) appealed an unemployment insurance decision dated August 27, 2013, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Molo Oil Company, Inc. (employer) The issue is whether the claimant was discharged for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 2, 2013. The claimant participated in the hearing. The employer participated through Elizabeth Schmal, Human Resources Representative.

ISSUE:

The issue is whether the claimant was discharged for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed full-time from June 4, 1998 through August 7, 2013 when she was discharged for closing the store early. She was hired as a cashier then promoted to an assistant manager and finally she became a store manager, which was her job title at the time of termination. The claimant's cashier called in sick on August 4, 2013 and the claimant could not reach the assistant manager so had to go to work at the last minute. The claimant went to work even though she was not feeling well but she forgot her lunch and her diabetes medication. She tried to make it to the end of the day but finally closed the store at 9:36 p.m. when it was supposed to close at 10:00 p.m. The claimant admitted she should not have closed early and that she could have contacted the corporate office for help.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

The claimant was discharged on August 7, 2013 for closing the store a half hour early on August 4, 2013. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a). The claimant's actions were clearly against policy and contrary to the employer's interests, but she was not thinking clearly because she did not have her diabetes medication. Misconduct must be substantial in nature to support a disqualification from unemployment benefits. *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. *Id.* There is no evidence of intentional or wrongful misconduct. Benefits are therefore allowed.

DECISION:

The unemployment insurance decision dated August 27, 2013, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs