

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES M POLZIN
Claimant

APPEAL NO. 06A-UI-10018-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARK KERN PAINTING & RESTORATION
Employer

OC: 08/27/06 R: 02
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

James Polzin filed an appeal from a representative's decision dated October 3, 2006, reference 01, which denied benefits based on his separation from Mark Kern Painting & Restoration (Kern). After due notice was issued, a hearing was held by telephone on October 30, 2006. Mr. Polzin participated personally. The employer participated by Mark Kern, Owner, and by Jared Harrington and Matt McCombs, Painters.

ISSUE:

At issue in this matter is whether Mr. Polzin was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Polzin began working for Kern in July of 2003 as a full-time painter. On August 30, 2006, there was a disagreement regarding the quality of the work being performed by the crew. Jared Harrington left the premises and Mr. Polzin went after him. He needed Mr. Harrington in order to proceed with the work. Mr. Polzin told Mark Kern and another individual that he was going after Mr. Harrington. He was gone for approximately 15 minutes. As a result of the incident, Mr. Polzin was discharged.

The employer believed the incident of August 30 was the product of miscommunication. The building they were working in is relatively large and it is sometimes difficult to hear what is being said. The incident of August 30 was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

Mr. Polzin was discharged by Kern. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Polzin was discharged because the employer believed he had walked off the job on August 30, 2006. He

did not walk off the job. He went to try to get another employee to come back to the job. Before leaving, he notified the employer and a coworker of his intentions. It appears that the employer did not hear him because of difficulty hearing in the room. Mr. Polzin did not deliberately or intentionally disregard the employer's interests or standards on August 30.

The employer has not alleged as misconduct any actions on Mr. Polzin's part prior to August 30. Inasmuch as he did not walk off the job on August 30, the administrative law judge concludes that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated October 3, 2006, reference 01, is hereby reversed. Mr. Polzin was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/cs