

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVEN L ZOOK**  
Claimant

**APPEAL NO. 09A-UI-19370-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**A-LERT**  
Employer

**OC: 11/22/09**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Steven Zook filed an appeal from a representative's decision dated December 22, 2009, reference 01, which denied benefits based on his separation from A-Lert. After due notice was issued, a hearing was held by telephone on February 8, 2010. Mr. Zook participated personally. The employer participated by Mary Dold, Employee Services Manager.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Zook was employed by A-Lert from October 30, 2008 until November 23, 2009 as a full-time millwright and ironworker. He was discharged based on an allegation that he violated the employer's safety standards.

Mr. Zook and a coworker were working on a grating at the ADM facility in Clinton, Iowa, on November 23, 2009. The opening for the grating was approximately 36 by 46 inches with a depth of approximately eight to nine feet. The supervisor told them that, if they went on break, to cover and secure the grate as best they could and put red "danger" tape around it. Before the two went on break, they covered all of the opening with the exception of an area approximately 18 inches wide. The red "danger" tape was placed around the area to alert others to stay away from the area. While the two were on break, an ADM representative went to the site and complained to A-Lert that the two had failed to secure the open grate area. As a result, both A-Lert employees were discharged he same day. Mr. Zook had not previously violated any known safety standards.

**REASONING AND CONCLUSIONS OF LAW:**

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. Zook was discharged because he failed to cover a grate opening in the manner desired by his employer, causing what the employer believed to be a safety violation. The administrative law judge believes Mr. Zook had a good-faith belief that he and his coworker covered the grate in the manner directed by the supervisor.

The evidence failed to establish that Mr. Zook deliberately and intentionally allowed a safety risk to exist at the job site. He and his coworker did not take off for break leaving a 36 by 46 inch hole in the ground. They took steps to secure the opening so that others would not fall through if they happened to miss the "danger" tape draped around the area. At most, Mr. Zook may have misunderstood the instructions given by the supervisor. However, the evidence falls short of establishing a willful or wanton disregard for the employer's interests or standards.

For the reasons stated herein, it is concluded that the employer has failed to satisfy its burden of proving disqualifying misconduct. While the employer may have had good cause to discharge Mr. Zook, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Benefits are allowed.

**DECISION:**

The representative's decision dated December 22, 2009, reference 01, is hereby reversed. Mr. Zook was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs