

**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**

**DAVID C CROUSE  
27553 FREDERICK DR  
LECLAIRE IA 52753**

**TIGHTON FASTENERS & SUPPLY INC  
6620 F ST  
OMAHA NE 68117-1010**

**Appeal Number: 05A-UI-00523-HT  
OC: 12/19/04 R: 04  
Claimant: Appellant (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, David Crouse, filed an appeal from a decision dated January 13, 2005, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on January 31, 2005. The claimant participated on his own behalf. The employer, Tighton Fasteners and Supply, Inc. (Tighton), participated by Office Manager Rob Popp. Exhibits A, One and Two were admitted into the record.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: David Crouse was employed by Tighton from November 18, 2003 until December 17, 2004. He was a full-time service technician.

In July 2004, the claimant was advised by his supervisor at the time that he was not meeting the necessary quota of fixing six to eight tools per day. On October 18, 2004, the new supervisor, Rob Popp, issued a written warning to the claimant on the orders of Owner Dan Williams. The warning advised Mr. Crouse that he would need to improve his quota during the 30-day probation which was being instituted and that his job could be in jeopardy. He was averaging about four tools per day.

On November 18, 2004, the claimant's performance was reviewed and his quota had improved somewhat to five tools per day but not to the expected level, so another 30-day probation was started. When the final review came his performance had slipped to 3.5 tools per day. He was then discharged.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant had been advised he was expected to repair a certain number of tools per day as part of his job responsibilities. He consistently failed to meet this expectation and was first counseled about it in July 2004. Because his performance did not improve he was given a formal disciplinary warning after which his performance improved immediately. This is significant because it indicates he was capable of performing to a higher standard when properly motivated. However, the performance declined again after the probationary period was extended in November 2004.

Mr. Crouse maintains there were not enough tools coming in during the time period from August 11 to December 16, 2004, for him to have been able to average the required six to eight tools per day. However, the employer determined the average on a day-by-day basis, counting the number of tools waiting to be fixed with those which actually were repaired, and the claimant was still not performing as required. He was capable of doing the work because the employer never indicated he did a poor job repairing the tools, only that he did not repair enough of them. If he had run out of tools to repair there were other, secondary job duties he could have performed and would not have lacked for work.

The record establishes the claimant was capable of working to a higher standard than he chose to do during most of his employment period. Failure to work to the best of one's ability is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of January 13, 2005, reference 01, is affirmed. David Crouse is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/sc