

**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 A CRAWFORD  
3 WASHINGTON PL  
GRINNELL IA 50112**

**DONALDSON COMPANY INC  
c/o EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000**

**Appeal Number: 04A-UI-12137-HT  
OC: 10/10/04 R: 02  
Claimant: Respondent (2)**

**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 employer, Donaldson Company, Inc. (Donaldson), filed an appeal from a decision dated November 4, 2004, reference 01. The decision allowed benefits to the claimant, David Crawford. After due notice was issued a hearing was held by telephone conference call on December 7, 2004. The claimant participated on his own behalf. The employer participated by Human Resources Administrator Diana Duncan, Production Supervisor Sam Ide and was represented by Employers Unity in the person of Lucie Hengen. Exhibits One and A 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 Crawford was employed by Donaldson from August 17, 1987 until October 5, 2004. He was a full-time laser operator working the third shift. He had received a copy of the plant work rules, which prohibit sleeping on the job, parking illegally, and leaving the premises during work hours.

On the shift, which began at 10:30 p.m. on Sunday, October 3, 2004, Production Supervisor Sam Ide last saw the claimant at his machine around 10:45 p.m. Around midnight Mr. Ide noticed the claimant was not at his machine. After a second inspection around 1:00 a.m. determined the claimant was still not at his machine, the supervisor began to look for him. He noticed the door at the back of the building was ajar. This door will not close completely without being pushed and Mr. Ide had checked it at the beginning of the shift and it was closed. No one had any reason to use that door during the shift.

The supervisor stepped out of the door and saw Mr. Crawford's van parked in an illegal area between the torit units. The van was backed into the space, not pulled in front-first. Closer inspection revealed the claimant asleep on the back seat of in the van. Mr. Ide returned to the plant and summoned a union representative to accompany him. The two of them again inspected the van and determined Mr. Crawford was asleep. They woke him and the supervisor notified the claimant he was suspended, then left in order to allow the union representative to speak with him.

On October 4, 2004, the claimant presented a note from his doctor saying he would be quite drowsy due to a "medication error." He had seen the doctor that day, not immediately after the seizure the night before. However, on October 5, 2004, he presented another doctor's note saying he had suffered a seizure on two prior occasions and on October 3, 2004, had suffered another one, and it was not a medication error. This was the first the employer had ever known of any seizure disorder in spite of the fact the claimant had suffered two prior ones. He sought medical attention only after the second incident and the doctor diagnosed it as a result of alcohol withdrawal and recommended only that the claimant refrain from driving, although Mr. Crawford did not obey this recommendation and continued to drive. At no time did any doctor restrict his work activities and the claimant did not notify the employer of his condition. He acknowledged the seizures usually came after a period of heavy drinking.

Mr. Crawford had been warned twice before about parking in an unauthorized area, the same one where his van was found on October 3, 2004. He maintains he did not park his van there at the beginning of the shift but must have suffered a seizure, left his work station, went to the front parking lot, found his van, drove it to the back of the building and backed it into the space by the torit units, then fell asleep in the back seat. He presented nothing from his physician verifying his medical condition.

David Crawford has received unemployment benefits since filing a claim with an effective date of October 10, 2004.

#### 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 has asserted he has no memory of the incidents of October 3, 2004. He maintains he had a seizure, left his machine, went to the parking lot, got in his van, pulled it around to the torit area, backed it into the space between the units, went to the back seat and fell asleep. He acknowledged he had seizures before brought on by withdrawal after a period of excessive alcohol consumption, but was never given any restrictions by his doctor except not to drive, which he ignored. The administrative law judge finds the claimant's testimony to be entirely too fantastic to be credible, especially in light of the fact he submitted nothing from a physician verifying that he would "black out" and still be capable of performing the complex set of maneuvers which resulted in him being found asleep in his van in an unauthorized area. The previous seizure he suffered had resulted in activity no more complex than walking around the house opening doors and turning on lights.

The administrative law judge concludes the claimant intentionally parked his van in the back of the building at some point, and left his workplace intentionally to sleep in his vehicle. If, as he asserted, he left his work station and went out to the front parking lot to get his van, there would

have been no need for him to use the back door adjacent to the torit units and it would not have been ajar.

The claimant was discharged for sleeping on the job and parking in an illegal area, after being warned. This is conduct not in the best interests of the employer and he is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of November 4, 2004, reference 01, is reversed. David Crawford is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$762.00.

bgh/pjs