

**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**

**CRAIG A RATHE
198 OAKWOOD DR
EVANSDALE IA 50707**

**A-LINE IRON AND METALS INC
PO BOX 1902
WATERLOO IA 50704**

**DAWN NEWCOMB
ATTORNEY AT LAW
208 E 4TH ST
WATERLOO IA 50703**

**Appeal Number: 05A-UI-08663-HT
OC: 07/24/05 R: 03
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2) – Discharge

STATEMENT OF THE CASE:

The claimant, Craig Rathe, filed an appeal from a decision dated August 15, 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 September 7, 2005, and concluded on October 6, 2005. The claimant participated on his own behalf and was represented by Attorney Dawn Newcomb. The employer, A-Line Iron and Metals, Inc. (A-Line), participated by Vice President Kyle Stone.

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: Craig Rathe was employed by A-Line from March 30

until July 20, 2005. He was a full-time scale operator. It was his job to weigh vehicles loaded with scrap metal, grade the metal in the load, and fill out a scale certificate. The certificate would then be taken, along with the load, to the warehouse. After unloading, the ticket would be returned to the scale, where the claimant would again weigh the truck, thereby ascertaining the amount of the scrap metal by calculating the difference between the vehicle loaded and unloaded.

Around July 13, 2005, the employer noticed a serious inventory discrepancy. An investigation was done by examining scale certificates, interviewing the claimant and others, and watching surveillance camera footage. It was determined the claimant had allowed at least one other employee, Brian White, to weigh his own vehicle and fill out his own scale certificate on a number of occasions. Mr. White was forging the information on the certificate and inflating the amount of the material. In all he defrauded the employer of approximately \$17,000.00, and is currently charged with first degree theft.

The claimant admitted to allowing Mr. White to weigh his own vehicle and make out his own ticket. He did this based on comments from Mr. White about what good friends he and Vice President Kyle Stone were, and because, in Mr. Rathe's words, "he was an honest-looking guy." Mr. Stone was available throughout the day by phone, but the claimant did not contact him to make sure it was okay to allow Mr. White to weigh his own truck.

When the employer ascertained the claimant had not weighed Mr. White's vehicle himself, but had allowed him to do it on his own, he was discharged for "negligence."

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 was informed of what his duties were and how he was to perform them. The most important of those duties was to weigh the trucks before and after unloading and complete a scale certificate. Mr. Stone made himself available in person or by cell phone at all times for any questions Mr. Rathe might have. However, the claimant failed to properly fulfill those duties and allowed an employee to defraud the company by weighing his own truck and filing out his own scale certificates, which resulted in a substantial loss to the company.

Mr. Rathe has attempted to place the blame on Mr. Stone for hiring a man he knew had some criminal background and thus relieve himself of any responsibility for his own failure to perform his duties as required. His only reason for allowing the other employee to weigh his own truck was Mr. Rathe's belief in Mr. White's unsubstantiated statements he was good friends with Mr. Stone and because "he looked honest."

If this had been a one-time incident, the administrative law judge does not believe it would rise to the level of misconduct sufficient to warrant a denial of unemployment benefits. But the claimant did not make any attempt to check Mr. White's claims with Mr. Stone, or check to find out if the employer wanted to exempt Mr. White from the requirement of having his truck weighed by the scale operator. Instead he allowed this situation to continue over the course of his employment, which resulted in a large monetary loss to A-Line metals.

The claimant asserted he is not guilty of misconduct in that he did not knowingly or willfully attempt to help Mr. White defraud the employer, and the administrative law judge does not disagree. However, the definition of misconduct under the case cited above does include negligence of such recurrence that it equals a deliberate act. This is not a case where the claimant lacked the necessary skills to perform a job to the employer's satisfaction but where he continually failed to perform his essential job duties as required. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of August 15, 2005, reference 01, is affirmed. Craig Rathe is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjw