

**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**

**DAN J LIPSIUS
5038 – 3RD ST SW
KALONA IA 52247**

**CITY OF IOWA CITY
ATTN PAYROLL/ACCOUNTING
410 E WASHINGTON ST
IOWA CITY IA 52240**

**GREGG GEERDES
ATTORNEY AT LAW
609 IOWA STATE BANK BUILDING
102 S CLINTON ST
IOWA CITY IA 52240**

**Appeal Number: 05A-UI-03575-CT
OC: 03/06/05 R: 03
Claimant: Appellant (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, 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)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Dan Lipsius filed an appeal from a representative's decision dated March 28, 2005, reference 01, which denied benefits based on his separation from the City of Iowa City. After due notice was issued, a hearing was held by telephone on April 26, 2005. Mr. Lipsius participated personally and was represented by Gregg Geerdes, Attorney at Law. The employer did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Lipsius was employed by the City of Iowa City from

February of 1985 until March 9, 2005. He was employed full time in parking meter and ramp repair. He drove a city vehicle and was required to display a city-issued parking permit, which he paid for. On March 9, he was placed on administrative leave pending an investigation on the question of whether he fraudulently used a parking permit. Approximately one year before his separation, he lost his parking permit and purchased a replacement. The original permit was found but Mr. Lipsius was unsure which was the old permit and which was the new one. Therefore, he used both permits. There was an allegation that one of the cards was used by his wife, also a city employee.

On or about March 9, Mr. Lipsius was given the option of quitting or being discharged. He submitted his resignation in response. The above matter was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Lipsius was separated from employment for any disqualifying reason. Where an individual resigns after being given the choice of quitting or being discharged, the separation is not considered a voluntary quit. See 871 IAC 24.26(21). Therefore, Mr. Lipsius' separation shall be considered a discharge. 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). The employer did not participate in either the fact-finding interview or the hearing held in connection with Mr. Lipsius' claim for job insurance benefits. The employer has not submitted evidence to establish that he deliberately and intentionally acted in a manner he knew to be contrary to the employer's interests or standards. The record contains insufficient evidence on which to conclude that Mr. Lipsius was guilty of fraud with respect to the use of a parking permit.

The employer had the burden of providing specific details concerning the reason for Mr. Lipsius' discharge as mere allegations of misconduct are not sufficient to result in disqualification from benefits. Given the lack of evidence from the employer, the administrative law judge must conclude that the employer has failed to satisfy its burden of proof. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated March 28, 2005, reference 01, is hereby reversed. Mr. Lipsius was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs