

**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**

**RITA T GRAPES
PO BOX 685
CEDAR RAPIDS IA 52406**

**COLLEGE COMMUNITY
SCHOOL DISTRICT
ATTN – SECRETARY
401 - 76TH AVE SW
CEDAR RAPIDS IA 52404**

**Appeal Number: 05A-UI-08670-RT
OC: 07-24-05 R: 03
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, 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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, College Community School District, filed a timely appeal from an unemployment insurance decision dated August 16, 2005, reference 01, allowing unemployment insurance benefits to the claimant, Rita T. Grapes. After due notice was issued, a telephone hearing was held on September 8, 2005, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where she or any of her witnesses could be reached for the hearing, as instructed in the notice of appeal. James Rotter, Director of Business Services, and Scott Grabe, Director of Transportation, participated in the hearing for the employer. Employer's Exhibits 1 and 2 were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits 1 and 2, the administrative law judge finds: the claimant was employed by the employer as a part-time bus driver from April 30 2003 until she was discharged on July 29, 2005. The claimant was discharged for using an employer's vehicle, a van, over the week-end of July 8, 9, 10, 2005, without permission and in violation of the employer's policy. The employer has a clear policy in its driver's handbook, as shown at Employer's Exhibit 1, prohibiting the personal use of school or employer vehicles. The claimant received a copy of this handbook. On July 7, 2005, the claimant had an emergency with her husband. The claimant asked Sharon Meskimen, Transportation Secretary, if she could use the employer's vehicle that day for the emergency involving her husband. Ms. Meskimen approved the claimant's use of the vehicle for that day. The claimant used the vehicle that day and returned it that evening. The next day, July 8, 2005, the claimant took the employer's vehicle, a van, without permission and kept it for the entire week-end using it for personal use. The use was not an emergency over the week-end. The claimant has her own vehicle and she also has family in the area that also have vehicles. Tragically, the claimant's husband died on Sunday, July 10, 2005. On July 8, 2005, when the claimant took the van, she told the mechanic that she had permission and although he was reluctant, he allowed the claimant to take the van. The claimant had no such permission for the week-end use. Personal use of employer's vehicles is not a common practice. The claimant returned the vehicle on Monday, July 11, 2005. The claimant was then discharged for this use

Pursuant to her claim for unemployment insurance benefits filed effective, July 24, 2005, the claimant has received unemployment insurance benefits in the amount of \$1,540.00 as follows; \$220.00 per week, for seven weeks, from benefit week ending, July 30, 2005 to benefit week ending, September 10, 2005. Of that amount \$128.00 was offset against an overpayment from 2002.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. The administrative law judge concludes reluctantly that it was.
2. Whether the claimant is overpaid unemployment insurance benefits. The administrative law judge concludes reluctantly that she 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 employer's witness, James Rotter, Director of Business Services, credibly testified that the claimant was effectively discharged on July 29, 2005, which was her last paid day. Mr. Rotter further testified that the claimant was discharged for the personal use of an employer's van over the week-end of July 8, 9, 10, 2005, without permission from the employer and in violation of the employer's policy. The employer has a clear policy as shown at Employer's Exhibit 1, prohibiting personal use of school or employer vehicles. On July 7, 2005, the claimant had an emergency with her husband and she requested the use of an employer's vehicle for that day and it was approved by the transportation secretary, as shown at Employer's Exhibit 2, which is a statement by Sharon Meskimen, the transportation secretary. The claimant returned the vehicle that day. However, the next day, on July 8, 2005, a Friday, the claimant again took the employer's vehicle, a van, and kept it for the entire week-end, using it for personal business and not on an emergency basis. The claimant had no permission to take the vehicle on and after July 8, 2005. Personal use of employer's vehicles is not a common practice. The evidence also establishes that the claimant had her own vehicle and also had family in the area who also had vehicles. The claimant's husband tragically died on Sunday, July 10, 2005. The administrative law judge concludes that the claimant's use of the employer's vehicle on July 7, 2005, was for an emergency and was with permission from the employer and this was not disqualifying misconduct. However, the administrative law judge is reluctantly constrained to conclude that the claimant's use of the vehicle on July 8, 9, 10, 2005, was without permission and was in violation of the employer's policy and was disqualifying misconduct. It was a deliberate act constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evinces a willful or wanton disregard of the employer's interests and is disqualifying misconduct. The administrative law judge is not without great sympathy for the claimant who lost her husband over that week-end. However, in the absence of any evidence to the contrary, the administrative law judge must conclude that the claimant's use was for personal reasons and without permission. On an emergency basis the claimant used the vehicle and that was acceptable. However, once the emergency was over the

claimant should have been able to use her own vehicle or the vehicles of family in the area and she did not. Accordingly, the administrative law judge reluctantly concludes that the claimant was discharged on July 29, 2005, for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

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 administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,540.00 since separating from the employer herein on or about July 29, 2005 and filing for such benefits effective July 24, 2005. The administrative law judge is reluctantly constrained to conclude that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge is further reluctantly constrained to conclude that these benefits must be recovered in accordance with the provisions Iowa law.

DECISION:

The representative's decision of August 16, 2005, reference 01, is reversed. The claimant, Rita T. Grapes, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she was discharged for disqualifying misconduct. She has been overpaid unemployment insurance benefits in the amount of \$1,540.00.

dj/tjc