

BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319

---

DARRYL L SMITH

Claimant,

and

DES MOINES REGIONAL TRANSIT  
AUTHORITY

Employer.

:  
:  
:  
:  
:  
:  
:  
:

HEARING NUMBER: 09B-UI-12260

EMPLOYMENT APPEAL BOARD  
DECISION

N O T I C E

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.5-2-A**

D E C I S I O N

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member concurring, reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

---

John A. Peno

---

Elizabeth L. Seiser

AMG/fnv

**CONCURRING OPINION OF MONIQUE F. KUESTER:**

I agree with my fellow board members that the administrative law judge's decision should be affirmed; however, I would comment that while the employer had compelling business reasons to terminate the claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W. 2d 219 (Iowa App. 1983.) The claimant was terminated for a clear lack of judgment and a prudent person would understand that his actions constituted bad behavior in the workplace. However, the employer failed to present their case in a clear and concise manner.

It would benefit the employer in future hearings to be more prepared. The prevailing issue was the length of time between the final action of misconduct and the actual termination. A period of 15 days is clearly too long to wait for a separation determination especially without good cause.

The claimant had multiple accidents and subsequent warnings, which if properly offered into evidence, may have assisted the employer in presenting their case. The claimant's comment, "I haven't had anything but accidents" (Tr. 24, line 3) should have been an issue since the claimant was a DART bus driver. The claimant's apparent inability to understand that multiple accidents were unacceptable and that an "over-friendly" gesture of taking a customer's photo was inappropriate are difficult to pass off as mere errors in judgment. Yet, the employer failed to satisfy his burden of proving disqualifying misconduct.

It is imperative that the employer provide all pertinent testimony during the course of the hearing and present relevant evidence such as the employee handbook. Finally it is critical to remember to maintain a professional demeanor and present all testimony in an appropriate manner. (Tr. 29, lines 28-3) Having failed to provide substantial evidence to support their case, I must allow benefits provided the claimant is otherwise eligible.

---

Monique F. Kuester

AMG/fnv