

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**ANGILA K BUSH**  
Claimant

**APPEAL NO: 12A-UI-01767-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DECKER TRUCK LINE INC**  
Employer

**OC: 01/08/12  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness  
871 IAC 24.32(8) – Current Act

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated February 15, 2012, reference 01, that held the claimant was not discharged for misconduct on January 11, 2012, and benefits are allowed. A telephone hearing was held on March 8, 2012. The claimant participated. Jenny Smith, Attorney, Brenda McNealey, HR Director, and Laurel Puls, Controller, participated for the employer. Employer Exhibit 1 (Pages 1 – 15) was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on December 30, 2002, and last worked for the employer as a full-time driver accounts receivable clerk on January 6, 2012. She was discharged on January 11 for violation of the employer attendance policy due to excessive absenteeism and tardiness. The employer relies on claimant's absences of January 9/10, 2012 that she properly reported due to illness as the most recent incidents leading to discharge.

Claimant received the employer attendance and disciplinary policy. She received a written warning on October 10, 2011 for absences/tardiness and taking excessive breaks. She was issued a written warning on November 1 for tardiness and given a three-day suspension. She was put on notice that a further attendance issue could mean employment termination.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for a current act of misconduct in connection with employment on January 11, 2012.

The employer is required to establish a current act or acts of misconduct in order to disqualify claimant. The employer is relying on claimant's properly reported absences due to illness for January 9/10 as the current acts that are not misconduct. Although the employer issued a written warning/suspension to claimant on November 1, it did not issue any further discipline leading to the January 11 discharge.

**DECISION:**

The department decision dated February 15, 2012, reference 01, is affirmed. The claimant was not discharged for a current act of misconduct on January 11, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs