

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONALD R MINIER**  
Claimant

**APPEAL NO. 09A-UI-02249-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RUAN TRANSPORT CORP**  
Employer

**OC: 12/07/08**  
**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Ruan Transport Corporation (Ruan) filed an appeal from a representative's decision dated February 4, 2009, reference 01, which held that no disqualification would be imposed regarding Donald Minier's separation from employment. After due notice was issued, a hearing was held by telephone on March 5, 2009. Mr. Minier participated personally and was represented by Jennifer Bennett Finn, Attorney at Law. The employer participated by Gary Gebers, Terminal Manager. Exhibits One, Two, and Three were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. Minier was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Minier was employed by Ruan from September 27, 1992 until December 4, 2008 as an over-the-road driver. He was discharged after he received a ticket and after a Department of Transportation (DOT) officer alleged that he was unprofessional.

Mr. Minier was driving the employer's vehicle near Grinnell, Iowa, on November 25, 2008 when he was stopped by DOT and cited for reckless and unsafe driving. The citation was apparently due to the fact that he had driven on the shoulder in order to avoid a car he believed was going to hit him. Because he did not feel the DOT officer was driving a safe distance behind him when he was pulled over, Mr. Minier commented to him that he did not like tailgaters. The employer did not speak with Mr. Minier concerning the allegations made by the DOT officer. The employer was not aware of any other citations received by Mr. Minier during the course of his employment with Ruan. The citation he received on November 25, 2008 was later dismissed by the Iowa District Court for Poweshiek County. The last incident for which the employer believed Mr. Minier was at fault was on June 14, 2007 when he hit a lamp post.

**REASONING AND CONCLUSIONS OF LAW:**

Mr. Minier was discharged from employment. An individual who was discharged from employment is only 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). Part of the reason for Mr. Minier's discharge was the fact that he received a citation while driving the employer's vehicle. The fact that he was cited does not, in and of itself, establish that he was guilty of the conduct. His guilt was not established in a legal proceeding as the charges were dismissed. The employer did not present any independent evidence to establish that Mr. Minier was driving recklessly or unsafely on November 25, 2008.

Mr. Minier was also discharged because a DOT officer reported that he was unprofessional when stopped on November 25. The employer's only evidence was second-hand hearsay. The employer's evidence on the issue was not sufficient to establish an act of misconduct. Mr. Minier was credible in his testimony that he only told the officer he did not like tailgaters. His statement was no so outrageous as to constitute a substantial disregard of the employer's interests or standards.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that disqualifying misconduct has not been established. While the employer may have had good cause to discharge Mr. Minier, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits.

**DECISION:**

The representative's decision dated February 4, 2009, reference 01, is hereby affirmed. Mr. Minier was discharged by Ruan but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs