

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD J SCALLY
Claimant

APPEAL NO. 08A-UI-06559-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RUAN TRANSPORT CORP
Employer

**OC: 06/08/08 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Ruan Transport Corporation (employer) appealed a representative's July 10, 2008 decision (reference 01) that concluded Ronald J. Scally (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 30, 2008. The claimant participated in the hearing. Matt Skarin, the terminal manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 4, 2003. The claimant worked as a full-time driver. On March 14, 2008, the employer's customer, Target, reported that a person made a complaint about a driver of a Target trailer, the claimant. The claimant was identified as the driver in question. The person who complained reported that the claimant tried to run him off the road. When the employer talked to the claimant about this, the claimant denied the allegation.

On March 14, the complaining driver passed the claimant and then cut in front of the claimant on a residential street. The driver cut in so close to the claimant that he turned on his high beams to let the driver know he had almost caused an accident. The employer reminded the claimant that he must always drive professionally.

On April 14, Target personnel again reported that two people in a vehicle reported the claimant would not allow them to merge onto a highway and when they passed him the claimant made obscene gestures at them. The claimant denied the allegation that he again had been unprofessional.

On April 14, the claimant was unable to safely move to the left-hand side of the road to let a driver merge onto the highway. When he was unable to do this, the complaining people accelerated and pulled in right in front of the claimant. The people in this car then jammed on their brakes. The claimant and others behind him were forced to brake. When the claimant tried to pass this vehicle, the driver changed lanes so the claimant could not pass him. This went on for about three miles. The claimant was finally able to pass the driver. The claimant considered this a dangerous situation and called 911 from his cell phone. While on the phone, the claimant gestured to the driver that he was on the cell phone reporting that person's dangerous driving. The driver of the car directed an obscene gesture toward the claimant. The claimant did not make any obscene gestures.

After Skarin received two reports of unprofessional driving with a month, he decided to discharge the claimant. Skarin considered the claimant a potential driving risk based on the two unprofessional driving complaints. The employer discharged the claimant on April 14, 2008.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's testimony as to what occurred on March 14 and April 14 must be given more weight than the employer's reliance on unsupported hearsay information from the employer's customer, Target. Based on the claimant's testimony, he did not drive unprofessionally or drive in such a way that was not safe.

The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. Therefore, as of June 8, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's July 10, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of June 8, 2008, the claimant is qualified to receive benefits, provided he meets

all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css