

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEAN PAUL PROVENCHER**  
Claimant

**APPEAL NO. 08A-UI-06282-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JACOBSON TRANSPORTATION CO INC**  
Employer

**OC: 05/18/08 R: 02**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Jacobson Transportation Company, Inc. (employer) appealed a representative's July 1, 2008 decision (reference 02) that concluded Jean Paul Provencher (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, telephone hearings were held on July 30 and August 26, 2008. The claimant participated in the July 30 hearing. The claimant was called for the August 26 continued hearing and was present for part of the hearing. The cell phone he used disconnected the claimant from the hearing. After realizing the claimant had been disconnected, the administrative law judge called the claimant's phone number. The claimant did not answer but a message was left for him to contact the Appeal Section immediately. Since the continued hearing was to obtain testimony from two additional employer witnesses and give the employer an opportunity to look for and provide hotel receipts the claimant may have submitted between April 19 and May 17, the hearing proceeded without the claimant. Lyle Powell observed the July 30 hearing and represented and testified on the claimant's behalf during the August 26 hearing. John Briley, the vice president and safety director, participated in both hearings on the employer's behalf. Jaci King and Matt Roe participated only on August 26, 2008. During the hearing, Employer Exhibit One was offered and admitted as evidence during the July 30 hearing. The claimant did not contact the Appeals Section again on August 26. 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 September 13, 2005. The claimant worked as a truck driver on local routes and over-the-road routes. Prior to April 11, 2008, the claimant's job was not in jeopardy.

The employer gave the claimant a credit card, Com-Data, for fuel and other expenses when he took out-of-state assignments. When the claimant was away from his local area, he understood he could pay for hotel rooms by taking a cash advance from the credit card. When the claimant submitted an expense report, the employer expected him to include hotel receipts. The employer added up the amount the claimant took as a cash advance and deducted the expenses. If the claimant took out more money as a cash advance from the credit card than he incurred in expenses, the employer deducted the excess amount from the claimant's payroll check. The employer paid a per diem rate on some assignments.

Prior to April 11, 2008, the claimant did not use the employer's credit card to take cash advances. From April 11, through May 17, the claimant withdrew \$150.00 as a cash advance almost daily. The total amount he withdrew during this time was \$4,350.00. (Employer Exhibit One.)

From April 19 through May 17, the claimant was dispatched by King from Jefferson, Iowa. The claimant regularly contacted Roe to report the number of miles he drove during this time. Roe recalls two times that the claimant asked if he could stay at a motel at the employer's expense. Although Roe gave the claimant permission to do this, the claimant still had to submit a hotel receipt to King. The claimant did not submit any expense reports or hotel receipts to King between April 19 and May 17, 2008.

The employer reviews weekly an employee's use of the employer's credit card. For some reason, the cash advances the claimant withdrew between April 11 and May 17 did not show up on the weekly reports. The employer made a mistake and failed to take the necessary steps to put limits on the credit card the claimant used.

In mid-May the employer's accounting department completed an audit. As a result of this audit, the employer finally learned about the claimant's frequent cash advances from April 11 through May 17 until May 20, 2008. Since the claimant had not been authorized to take these cash advances and he had not submitted any expense report, the employer concluded the claimant misappropriated the employer's money because he was not authorized to take cash advances when he was dispatched out of Jefferson, Iowa.

On May 23, 2008, the employer discharged the claimant for taking unauthorized cash advances. The claimant owed the employer money for the cash advances even though the employer kept the claimant's final paychecks. The employer calculated the claimant still owes the employer \$3,500.00.

#### **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. 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).

During the hearing, the claimant asserted he took the cash advances because Roe asked him to stay in hotels when he was dispatched from Jefferson, Iowa. The claimant further contended that he stayed in motels most of the week. After a hearing notice was mailed to the parties on July 10, the claimant contacted the Appeals Section and indicated he needed time to obtain receipts from motels he had stayed at. Even though the hearing in this matter did not close until August 26, the claimant never provided a copy of any motel receipts between April 19 and May 17, 2008. Furthermore, even though the claimant testified he turned in motel receipts to King, she testified that he did not turn in any expense report with hotel receipts to her during the time in question. The administrative law concludes the claimant's assertion that he regularly stayed at motels is not supported by the evidence. Therefore, the claimant's testimony on this point is not credible.

During the August 26 hearing, testimony was presented that the claimant told Powell he took the cash advances so he would have money if he was fined by DOT officials for driving an overweight truck. Although the employer pays for fines, the claimant's argument was that it took too long to contact the safety department to pay a fine. Since there is no evidence the claimant was fined between April 19 and May 17, this explanation does not explain why the claimant withdrew so much money.

Although the employer failed to limit the amount of the claimant's cash withdrawals, the claimant's actions still amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. His cash withdrawals were unauthorized and excessive. The claimant committed work-connected misconduct. Therefore, as of May 18, 2008, the claimant is not qualified to receive benefits.

The issue of overpayment and/or waiver of overpayment are remanded to the Claims Section to address.

**DECISION:**

The representative's July 1, 2008 decision (reference 02) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 18, 2008. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issues of overpayment and/or waiver of overpayment are remanded to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw