

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Scott M. Lacy was employed by Wal-Mart Stores, Inc. from November 6, 2004 until he was discharged August 22, 2005. He was an overnight maintenance worker in Mason City.

On August 17, 2005 Mr. Lacy was working at the store in Fort Dodge and staying at company expense at the Quality Inn Motel. At 5:41 a.m. that morning Mr. Lacy walked up to the desk at the Quality Inn Motel and took a donation can which contained an estimated \$25.00 in cash. His actions were recorded on the motel's closed circuit television. The motel questioned Mr. Lacy and notified Wal-Mart. Mr. Lacy admitted taking the can but could not recall what he had done with its contents. Based on this action, he was discharged.

Mr. Lacy has received unemployment insurance benefits since filing a claim effective August 21, 2005.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with his work. It does.

The evidence establishes that Mr. Lacy was staying at the motel at company expense in connection with his employment. Thus, his theft is directly related to his employment. Benefits are withheld.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Mr. Lacy has received unemployment insurance benefits to which he is not entitled. They must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated September 28, 2005, reference 03, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. He has been overpaid by \$1,760.00.

kkf/kjw