

October 6, 1999 until September 12, 2005 as a full-time route sales representative. He was discharged for theft.

On August 22, Mr. Easton was to collect money from Heartland Steakhouse (Heartland). The business was closed, and therefore he went back on August 24 and collected \$53.56. He gave the customer a receipt for the money. It was Mr. Easton's habit to put all money collected in one pocket of his clothing and not commingle it with his own money. At the end of the day, he completed a settlement sheet showing money collected during the day. When Mr. Easton completed his settlement sheet for August 24, he did not include the money collected from Heartland. He had excess cash in the pocket reserved for the employer's money but made no real effort to determine which account it was to be attributed to. Mr. Easton took the money home with him.

The next delivery to Heartland was on August 31. Because he was not going to be at work on that date, Mr. Easton went to the workplace on or about August 29. He wrote on the invoice for Heartland that they were to have a credit in the amount of \$53.56. He did not return the \$53.56 to the employer at that time. On September 5, Mr. Easton was on vacation and someone else ran his route. Because Aramark had no record of Heartland's August 24 payment, the company was given a bill for \$102.34, which included the \$53.56. Heartland presented its receipt reflecting that the \$53.56 had already been paid. It was at this point that the employer learned that Mr. Easton had not turned the money in. On September 9, Mr. Easton went to the workplace to check on a sale but still failed to return the \$53.56. There was a previous occasion on August 14 where Mr. Easton failed to turn in \$61.00 he collected from Heartland in cash. The money was not reflected on his settlement sheet for that date. The employer was in the process of making arrangements to deduct the \$61.00 from his pay. Mr. Easton was scheduled to return to work from vacation on September 13. He was notified of his discharge on September 12, 2005.

Mr. Easton has received a total of \$1,396.00 in job insurance benefits since filing his claim effective September 11, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Easton was separated from employment for any disqualifying reason. An individual who was discharged from employment is 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). Mr. Easton was discharged due to an allegation of theft of money belonging to the employer. The facts and circumstances of this case persuade the administrative law judge that he did, in fact, take money belonging to the employer. The money from Heartland was in a pocket reserved for money collected on his route. Therefore, Mr. Easton had to have known at the end of the day that the money belonged to the employer. Because the money was to have been collected on August 22, it was not on the settlement sheet for August 24. Therefore, the person going over the settlement sheet with Mr. Easton would have been unaware of the money he collected on August 24 from Heartland.

Mr. Easton had at least two opportunities to return the \$53.56 before being confronted by the employer on the matter. He was at the workplace on August 29 and September 9, but did not return the money on either date. Clearly he was aware on August 29 that he had the \$53.56, as he noted on the customer's invoice on that date that they were to receive a credit in this amount. However, he did not mention the matter to anyone while he was at the workplace on

August 29. He did not at any point notify the employer that he had inadvertently taken the money home but intended to return it. These factors persuade the administrative law judge that Mr. Easton intended to keep the money. Also persuasive is the fact that he failed to turn in \$61.00 in cash he collected from Heartland on August 14.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Theft of money belonging to one's employer is clearly contrary to the type of behavior an employer has the right to expect. For the above reasons, benefits are denied. Mr. Easton has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated September 28, 2005, reference 01, is hereby reversed. Mr. Easton was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Easton has been overpaid \$1,396.00 in job insurance benefits.

cfc/kjw