

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN F KUBA**  
Claimant

**APPEAL NO. 12A-UI-10913-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MEDIACOM COMMUNICATIONS**  
Employer

**OC: 08/05/12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated September 6, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 4, 2012. Claimant participated. The employer participated by Ms. Sara Blair, Senior Manager Human Resources, Mr. Joseph Ernster, Construction Supervisor and Robert Frazer, Construction Manager. Employer's Exhibits One through Seven were received into evidence.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: John Kuba was employed by Mediacom Communications from November 3, 1999 until August 9, 2012 when he was discharged from employment. Mr. Kuba was employed as a full-time designer and was paid by the hour. His immediate supervisor was Joseph Ernster.

Mr. Kuba was discharged on August 9, 2012 after he continued to access personal websites on the company computer system after being warned that his personal computer use had become excessive and that future violations could result in his termination from employment. The claimant had received warnings for excessive use of the company's computer system for personal uses on November 29, 2010, on a performance improvement plan on April 5, 2011 and during a final warning that was given on September 28, 2011.

Company policy allows occasional use of electronic equipment belonging to Mediacom Communications. However, based upon the warnings that had been served upon Mr. Kuba the claimant's use of computer systems for personal use had been limited by the company and the claimant had been placed upon notice that future violations would result in his termination from employment. The final incident took place when another supervisor again complained about Mr. Kuba's personal use of the company's computer systems approximately one and one-half

weeks before the claimant was discharged from employment. During that time the employer investigated and determined that the allegations were substantiated.

It is Mr. Kuba's position that he did not feel that his use was "excessive" and that because he did his work and did not embarrass the company he should not have been discharged from employment. The claimant's further position is that he believes his discharge took place because the employer's desire was to remove him as an employee without paying unemployment insurance benefits.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence in the record establishes that although the company had a policy that allowed occasional use of company electronic equipment for personal use the claimant had been placed upon notice on three occasions that his use had been considered to be excessive and that future use of the company's electronic equipment for personal use could result in his termination from employment. Mr. Kuba chose to ignore the repeated warnings that had been served upon him by the company and continued to believe that his own standard as to whether he believed that his use was excessive would be the standard used by the company.

Based upon the warnings that had been served upon the claimant the administrative law judge concludes that Mr. Kuba knew or should have known that his employment was in jeopardy and should have refrained from using company electronic equipment for personal reasons. The claimant's continued use for personal reasons of the company's electronic equipment was in violation of the warnings served upon him by the employer and constituted disqualifying misconduct.

**DECISION:**

The representative's decision dated September 6, 2012, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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