

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**ROBERT L GLASSBERG
5022 SPENCER DR SW
CEDAR RAPIDS IA 5 2404**

**MEDIACOM COMMUNICATIONS
CORPORATION
100 CRYSTAL RUN RD
MIDDLETOWN NY 10941**

**Appeal Number: 05A-UI-02275-HT
OC: 01/30/05 R: 03
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant, Robert Glassberg, filed an appeal from a decision dated February 24, 2005, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on March 22, 2005. The claimant participated on his own behalf. The employer, Mediacom, participated by Human Resources Manager Leann Carlson, Sales and Marketing Supervisor Bryant Ward and Sales and Marketing Manager Eric Heskje. Exhibit One was admitted into the record.

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: Robert Glassberg was employed by Mediacom from March 2, 2004 until January 31, 2005. He was a full-time direct sales representative.

On January 19, 2005, a customer contacted Sales and Marketing Supervisor Bryant Ward about the claimant. The day prior Mr. Glassberg had met with her to discuss installing high speed internet. At first the claimant stated he did not think that Mediacom could install the cable in her apartment and offered to do it on his own time for \$50.00, stating she could write the check to him. When she expressed doubts and concerns about the offer, he did a closer inspection of the cabling and said then he thought Mediacom could do the work.

When Mr. Ward discussed the matter with Mr. Glassberg, he admitted he had made the offer to install the cabling himself. He had "assumed" the employer would not do the installation. However, Mr. Glassberg is not an authorized installer for Mediacom and this authorization is critical in terms of quality control, complying with provisions of city codes and licensing agreements between the employer and other business entities. By making this offer the claimant also held himself out as a private contractor doing installation, and as such he would not have been authorized to access the Mediacom network.

The claimant was suspended pending investigation which consisted of interviewing the customer again to confirm the details, and referring the matter to the corporate human resources department. The decision was made to discharge him for violation of the code of ethics and other policies, which the claimant had received.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant violated the code of ethics not only by offering his services as an installer to a potential Mediacom customer, but by creating the appearance of impropriety. He was offering his services to a customer for work which the employer would have done free of charge. The claimant made a number of inappropriate assumptions about what he was authorized to do and what Mediacom would and would not do, without making any attempt to ascertain the facts from his supervisor. It obviously caused displeasure, if not outright consternation, on the part of the customer, which prompted her to complain. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of February 24, 2005, reference 01, is affirmed. Robert Glassberg is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/tjc