

**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**

**JASON R PIERCE
2940 – 26TH AVE
MARION IA 52302**

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

**Appeal Number: 04A-UI-02696-HT
OC: 02/08/04 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, Jason Pierce, filed an appeal from a decision dated March 2, 2004, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 1, 2004. The claimant participated on his own behalf. The employer, Mediacom, participated by Human Resources Supervisor Leann Carlson and Technical Supervisor Don Cook.

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: Jason Pierce was employed by Mediacom from April 19, 1999 until February 7, 2004. He was a full-time service technician.

The claimant received several verbal and written warnings regarding his failure to turn in paperwork and equipment at the end of each day. The paperwork was to verify work orders had been completed and his trip sheet, and the equipment had to be turned in to remove charges from the customer accounts. He would improve for a short period of time then the problem would start to build again. Technical Supervisor Don Cook gave the claimant many written reminders after the final written warning on August 27, 2003, about the equipment which he had not returned.

On February 7, 2004, the employer determined the claimant was not improving and the problem was continuing. Customers were being charged for equipment which had already been removed but, because Mr. Pierce was not returning it, the charges continued to be levied against the account. The human resources department reviewed his disciplinary record and he was discharged.

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 had been advised his job was in jeopardy as a result of his failure to submit equipment and paperwork at the end of each day. Mr. Pierce acknowledged he knew what was required of him but was not doing this part of his job. The fact he would improve for a short period of time is indication he was capable of doing the job to the employer's satisfaction. The failure to turn in paperwork and equipment inhibited the employer's ability to keep track of completed work orders and to remove charges from customer accounts, which had the potential of creating customer dissatisfaction. Failure to perform to the best of one's ability is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of March 2, 2004, reference 01, is affirmed. Jason Pierce is disqualified, and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/d