

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CHRISTOPHER A MAINS**  
Claimant

**FOCUS SERVICES LLC**  
Employer

**APPEAL 19A-UI-09163-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/03/19  
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Christopher Mains (claimant) appealed a representative's November 19, 2019, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from work with Focus Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 17, 2019. The claimant participated personally. The employer was represented by Karina Holt, Human Resources Assistant, and participated by Kodi McInerney, Process Administrator; Angie Greve, Human Resources Assistant; and Jennifer Romaine, Supervisor. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 18, 2017, as a full-time customer service and sales agent. The claimant signed for receipt of the employer's handbook on December 18, 2017.

The handbook states, "Focus Services does not allow any swearing on the call floor. Swearing on the call floor exposes the company to a great deal of risk. In order to reduce this risk any employee who is caught swearing on the call floor will be disciplined up to termination." The handbook also indicates that disruptive activity in the workplace and disrespectful language could result in termination.

On February 20, 2018, the employer issued the claimant a first and final written warning for saying, "oh damn" on the call floor. The employer notified the claimant that further infractions could result in termination from employment.

On June 27, 2019, the claimant asked the employer if he could go to break early. The employer told him he needed to wait until he worked two hours before taking a break. The claimant said,

"Fuck this shit" and went to break early. The employer notified the claimant that further infractions could result in termination from employment.

On November 4, 2019, the claimant did not place a telephone customer on mute or on hold while he took his headset off, sat, and thought for a number of minutes. The employer asked him if he was on "after call time". When he explained what he was doing, she gave him instructions and pointed him out to his supervisor. This upset the claimant. He loudly said, "Leave me the fuck alone". The employer thought he said, "I'm not on fucking 'after call' work".

The employer asked the claimant to come in to her office and talk. He felt that it was not a good idea because the employer was pressuring him. The claimant went outside and took a break. The employer asked the claimant to meet four times. The claimant returned to work on the call floor. Eventually, he followed the employer's instructions. The employer terminated the claimant for using profanity on the call floor.

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

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's November 19, 2019, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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