

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAVANNA J GAU
Claimant

APPEAL NO. 11A-UI-16208-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOCUS SERVICES LLC
Employer

**OC: 11-20-11
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 14, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 24, 2012. The claimant did not participate. The employer did participate through Kelly Lechnir, Staffing Coordinator.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a telephone agent full time beginning on September 14, 2011 through November 22, 2011 when she was discharged. The employer routinely monitored calls to ensure that policies and procedures were being followed. The claimant had been given a copy of the employer's policies and procedures which put her on notice that even one instance of profanity while on the telephone with a customer would lead to her discharge. While on a call on November 22 the claimant did not mute her telephone and commented that the customer was "annoying, superfricking annoying" and "really dude, stop your bitching." She was discharged for her use of profanity when speaking to a customer on the call floor.

While awarded benefits by the fact-finding representative, she had not collected any unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). "The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." This is ordinarily a fact question for the agency. *Budding v. Iowa Department of Job Service*, 337 N.W.2d 219 (Iowa App. 1983) is overruled "to the extent [it] contradicts this position. *Myers v. Employment Appeal Board*, 462 N.W.2d 734 (Iowa App. 1990). Claimant's use of profanity when speaking to a customer on the call floor is conduct that rises to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The December 14, 2011 (reference 01) decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css