

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

ANNA L NEWBY
1506 WINONA LN
COUNCIL BLUFFS IA 51503

FARNAM COMPANIES INC
PO BOX 34820
PHOENIX AZ 85067

JOSEPH BASQUE
532 – 1ST AVE SUITE 300
COUNCIL BLUFFS IA 51503-0803

Appeal Number: 04A-UI-00666-HT
OC: 12/07/03 R: 01
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, Anna Newby, filed an appeal from a decision dated January 7, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on March 23, 2004. The claimant participated on her own behalf and was represented by Legal Services in the person of Joseph Basque. The employer, Farnam Companies, Inc. (Farnam), participated by Administration Manager Janine Emmons and Director of Quality Jean Hobus .

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: Anna Newby was employed by Farnam from June 14, 1999 until December 8, 2003. She was a full-time quality control technician.

On June 2, 2003, the claimant received a written warning from Director of Quality Jean Hobus, who was her direct supervisor. Ms. Newby was advised she had missed too much work and in the future she must contact Ms. Hobus directly if she was going to miss any work. The warning notified her that her job was in jeopardy if she failed to do so.

On November 26, 2003, the claimant came to work but stayed only a short time before going home due to illness. She reported on her time card she had worked the entire day. Ms. Hobus was not aware of this until December 4, 2003, when she was investigating the claimant's absence on December 2, 2003, and she had not notified her supervisor as required. Ms. Newby had told a co-worker and the plant manager she would be absent but did not report to Ms. Hobus as required. The claimant was notified of her discharged on her next scheduled day of work, which was December 8, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she 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 her job was in jeopardy as a result of her absenteeism, and also that any further absences must be reported directly to Jean Hobus. She failed to follow the instructions of her supervisor and did not report her absence on December 2, 2003. Her explanation was that Mr. Bleyhl told her she did not need to report to Ms. Hobus, but the plant manager is not in a position to override the instructions of Ms. Hobus. The claimant could have reported her absence to both individuals and been within the requirements of her written warning. Failure to follow the instructions of a supervisor is insubordination, which is misconduct. The claimant is disqualified.

DECISION:

The representative's decision of January 7, 2004, reference 01, is affirmed. Anna Newby is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

bgh/b