

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

BARBARA J HAMOR
8928 N 51ST AVE W
COLFAX IA 50054

NAGEL FARMS INC
1215 BROAD ST
GRINNELL IA 50112

Appeal Number: 04A-UI-01788-C
OC: 01/18/04 R: 02
Claimant: Appellant (2)

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(1)d – Separation Due to Illness/Injury

STATEMENT OF THE CASE:

Barbara Hamor filed an appeal from a representative's decision dated February 13, 2004, reference 01, which denied benefits based on her separation from Nagel Farms, Inc. After due notice was issued, a hearing was held on March 23, 2004 in Des Moines, Iowa. Ms. Hamor participated personally. The employer participated by Kevin Nagel, President.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Hamor began working for Nagel Farms, Inc. on March 16, 2002 as a full-time truck driver. Her doctor took her off work beginning October 10, 2003 so that she could heal from an injury she sustained to her foot in the course of her employment. Prior to that time, Ms. Hamor had advised the employer that she would possibly need to undergo surgery to her back. The employer suggested that she have the back surgery while she was recuperating from her foot injury. It was the employer's hope that she would recover from both medical conditions at about the same time.

When Ms. Hamor left work on October 10, it was anticipated that she would be gone for approximately four weeks but the time was extended by her doctor. She underwent surgery on her back on November 24. She notified the employer on December 22 that she had been released by the doctor treating her for her foot condition but would not be released by her back doctor for another two to three weeks. On or about January 20, Ms. Hamor was released to full duty and notified the employer that she could return to work. She was not provided work at that time because the employer had been unable to hold her truck open pending her return. She then filed a claim for job insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Hamor was separated from employment for any disqualifying reason. She left the employment on October 9 on the advice of her doctor because she needed time for her foot injury to heal. While she was off work recuperating from her foot injury, she underwent surgery to her back. Although she did not notify the employer of the date on which she was to have back surgery, the employer was aware that she was considering having back surgery while away from work. In fact, it was the employer who suggested that she have the surgery during that time. There was no meeting of the minds as to whether Ms. Hamor would be allowed additional time off work to heal from her back surgery after she healed from her foot injury. However, Ms. Hamor had a good-faith belief that the employer had authorized her to have surgery on her back while off work because of her foot. Because Ms. Hamor left work on October 9 on the advice of her doctor, the provisions of Iowa Code Section 96.5(1)d are applicable.

The law requires that an individual return and re-offer her services to the employer once she has recovered from her illness or injury. Ms. Hamor did this on January 20, 2004 but no work was provided to her at that time. Inasmuch as the employer did not have work available for her on January 20, no disqualification is imposed.

It was the employer's contention that Ms. Hamor was fired for not returning to work when released by her foot doctor in December. Even if the administrative law judge were to consider the separation as a discharge, no disqualification would be imposed. The employer was on notice that she was unable to report on or about December 22 because her back doctor had not released her as able to work. Therefore, her absences from that point forward were properly reported to the employer. Moreover, the absences were for reasonable cause, recuperating from surgery. For the above reasons, the absences would be considered excused. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. It is true that Ms. Hamor did not give the employer advance notice of the precise date on which she would have the back surgery. However, she felt she had been authorized by the employer to have the surgery during this time frame. Therefore, her failure to give notice of the date of the surgery was not an act of misconduct. For the above reasons, the administrative law judge concludes that the discharge was not for disqualifying misconduct. While the employer may

have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983).

DECISION:

The representative's decision dated February 13, 2004, reference 01, is hereby reversed. Ms. Hamor was separated from employment for no disqualifying reason. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/d