

BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319

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MAREN R LEHIGH-HANSEN

Claimant,

and

GOVERNMENT EMPLOYEES  
INSURANCE CO

Employer.

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HEARING NUMBER: 08B-UI-02007

EMPLOYMENT APPEAL BOARD  
DECISION

NOTICE

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.5(2)a**

DECISION

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member concurring, and one member dissenting, reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

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Elizabeth L. Seiser

**CONCURRING OPINION OF JOHN A. PENO:**

I agree with my fellow board member that the administrative law judge's decision should be affirmed; however, I would also comment that the claimant did, in fact, eventually comply with the employer's directive. She had difficulty getting the requested documentation from her doctor. Additionally, I would note that the employer never questioned the claimant's excuse or reaction to her medication. The only reason the employer wanted a doctor's note was "to be uniform with other employees of the company." This reasoning does not detract from the fact that her tardies should have been excused according to the precepts of Gaborit v. Employment Appeal Board, 743 N.W.2d 554 (Iowa 2007) wherein the court held that a discharged employee's final absence, for which she did not present the required doctor's note, was excused as a matter of law, and therefore not misconduct.

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John A. Peno

AMG/fnv

**DISSENTING OPINION OF MONIQUE F. KUESTER:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. While it is unfortunate that the claimant is ill, I respectfully disagree with the finding of the ALJ. I believe the claimant engaged in misconduct when she willfully disregarded the company policy and continued to engage in the prohibited behavior. Ms. Lehigh-Hansen exhibited a deliberate violation and disregard of the standards of behavior expected by the employer.

The employer gave Ms. Lehigh-Hansen a reasonable opportunity to provide the medical documentation (15+ days). The company has a policy of dependability which the claimant signed. The claimant testified that she "spaced off" getting the information. She also testified that she knew she would be terminated if she did not provide the documentation. (Tr. 19, lines 16-19)

The employer showed a great deal of flexibility in dealing with this situation and gave Ms. Lehigh-Hansen ample time to get the information. By deliberately failing to provide the appropriate documentation, she forced the employer to terminate her employment in order to be consistent with company policy and adhere to fair and equitable treatment of her fellow associates.

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Monique F. Kuester

AMG/fnv

The claimant submitted a written argument to the Employment Appeal Board. The Employment Appeal Board reviewed the argument. A portion of the argument consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the argument and additional evidence (documents) were considered, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

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John A. Peno

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Elizabeth L. Seiser

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Monique F. Kuester

AMG/fnv