

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

AMIE J JACKSON

Claimant,

and

FARLEY'S & SATHERS CANDY CO INC

Employer.

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HEARING NUMBER: 12B-UI-10020

**EMPLOYMENT APPEAL BOARD
DECISION**

N O T I C E

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, 24.32-7

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, 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**

Monique F. Kuester

Cloyd (Robby) Robinson

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge in its entirety. The Claimant was on intermittent family medical leave for which her last day of work was July 27th when she failed to return her FMLA paperwork. The Claimant was scheduled to return to work on July 23rd; however, her FMLA paperwork had not yet been returned. The Claimant has no control over what happens in the doctor's office.

The Claimant's doctor told her that he sent the paperwork on July 24th. There is nothing in the record to support that the Claimant was not ill on the days she reported off work. In Gaborit v. Employment Appeal Board, 743 N.W.2d 554 (Iowa 2007), 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. Based on this record, I would conclude that the Employer has failed to satisfy their burden of proof. The Claimant provided credible testimony that she submitted the FMLA paperwork to her doctor who, in turn, indicated that he turned it into the Employer. While the Employer may have compelling business reasons to terminate the Claimant, conduct that 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). For all the foregoing, I would allow benefits provided the Claimant is otherwise eligible.

John A. Peno

AMG/fnv