

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

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**CHARISSA F HOLLIDAY**

Claimant,

and

**FILIZ INC**

Employer.

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**HEARING NUMBER: 12B-UI-11537**

**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 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**.

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Monique F. Kuester

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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 requested one day off to see her doctor. The Employer subsequently did not schedule her for four days. The Employer argues that she voluntarily quit; however, evidence supports that she called in sick. The Employer request that she provided doctor's excuse for August 21, 2012, which the Claimant did not submit because the Employer did not request it when she returned. On August 24, 2012, the Employer terminated the Claimant.

The Employer had given her a prior verbal warning regarding her absences and tardies. The Claimant denied any prior warnings, and the Employer failed to provide any documentation of the same. Nor was the Employer's witness able to testify to any firsthand witnessing of the Claimant's alleged tardiness. 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).

The final act involved the Claimant's failure to submit a doctor's note after returning from being absent due to illness. 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. For this reason, I would conclude that the Employer failed to satisfy their burden of proof. The Claimant was discharged for no disqualifying reason. Benefits should be allowed provided the Claimant is otherwise eligible.

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John A. Peno

A portion of the Claimant's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence were reviewed, 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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Monique F. Kuester

AMG/fnv

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Cloyd (Robby) Robinson