

**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**

**BRIAN J BENSON
1916 MAYFAIR ST
WATERLOO IA 50701**

**EXCEPTIONAL PERSONS INC
PO BOX 4090
WATERLOO IA 50704-4090**

**Appeal Number: 05A-UI-08024-CT
OC: 07/03/05 R: 03
Claimant: Respondent (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 for Misconduct

STATEMENT OF THE CASE:

Exceptional Persons, Inc. filed an appeal from a representative's decision dated July 26, 2005, reference 01, which held that no disqualification would be imposed regarding Brian Benson's separation from employment. After due notice was issued, a hearing was held by telephone on August 22, 2005. Mr. Benson participated personally. The employer participated by Sandy Giordana, Human Resources Director, and Debra Jungling, Business Director. Exhibits One through Six were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Benson was employed by Exceptional Persons, Inc. beginning December 6, 2004 as a full-time business director associate. On December 23, he suffered a heart attack and was off work until February 15, 2005. He initially returned to employment on a part-time basis but resumed full-time work on March 1. Because of the need for surgery, Mr. Benson again went on a medical leave of absence on April 21. It was anticipated that he would be gone for approximately one month.

As of May 19, Mr. Benson's doctor was unsure as to when he would be able to return to work as he had suffered complications from the surgery. Based on this factor, and the fact that he had exhausted all available leave, the employer made the decision that his job would not be held open for him. On May 24, Mr. Benson was notified by letter that his employment was terminated. His status was confirmed in a telephone conversation with him on May 25. Mr. Benson's inability to return to work was the sole reason for the separation.

Mr. Benson was released to return to work July 1, 2005. He did not contact the employer to re-offer his services because he had been terminated. He filed a claim for job insurance benefits effective July 3, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Benson was separated from employment for any disqualifying reason. Because the separation was initiated by the employer, it is considered a discharge. An individual who was discharged from employment is only disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer in this matter acknowledges that Mr. Benson's discharge was not due to any misconduct, only his inability to return to work following a medical procedure. The absences caused by his medical condition are excused and, therefore, may not form the basis of a misconduct disqualification. Inasmuch as Mr. Benson was separated from employment through no fault of his own, benefits are allowed.

It is true that Mr. Benson did not seek further work with the employer once he was released by his doctor to resume work activity. However, the law does not require him to seek re-employment if he was already discharged.

DECISION:

The representative's decision dated July 26, 2005, reference 01, is hereby affirmed. Mr. Benson was separated from employment for no disqualifying reason. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs