

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

PATRICK J BONZ
Claimant

APPEAL NO. 09A-UI-04930-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA INFORMATION INC
Employer

**Original Claim: 02/01/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Quit
Section 96.4-3 – Eligibility for Benefits

STATEMENT OF THE CASE:

Patrick J. Bonz filed a timely appeal from an unemployment insurance decision dated March 20, 2009, reference 01, that disqualified him from benefits. After due notice was issued, a telephone hearing was held April 21, 2009, with Mr. Bonz participating and being represented by Rhonda M. Tenuta, attorney at law. Human Resources Consultant Chris Namanny participated for the employer, Iowa Information, Inc.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

Did the claimant voluntarily leave employment without good cause attributable to the employer?

Does the claimant meet the eligibility requirements of being able to and available for work?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Patrick J. Bonz was employed as a photographer by Iowa Information, Inc., from September 2, 2007, until February 4, 2009. While at work on February 2, 2009, Mr. Bonz suffered a seizure. He was hospitalized overnight. Upon release from the hospital, his physician indicated that he should not drive a motor vehicle for six months. He returned to work on February 4, 2009. At 12:30 p.m., Human Resources Consultant Chris Namanny called to tell him that February 4 would be his last day of work because his job required that he be able to drive.

Mr. Bonz has suffered no seizures since February 2, 2009. He is taking medication and is having follow-up care with his physician. The seizure does not prevent him from working as a photographer. Since February 4, 2009, he has engaged in various volunteer projects using his professional skills and has done some freelance work. When necessary, Mr. Bonz has found others to drive him to the locations where his services are needed.

REASONING AND CONCLUSIONS OF LAW:

The first step in analyzing this evidence is to characterize the separation. The claimant testified under oath and subject to cross-examination that he was discharged by Ms. Namanny. His testimony did not change throughout the hearing. On the contrary, Ms. Namanny first indicated that Mr. Bonz was discharged because of his inability to drive. The story changed during the hearing. Later in the hearing, Ms. Namanny testified that Mr. Bonz resigned during telephone conversations while he was in the hospital. On rebuttal, Mr. Bonz firmly disputed that testimony.

The hallmarks of credible evidence are plausibility and consistency. In judging consistency, the administrative law judge views a witness's testimony in relation to the other evidence in the record as well as the internal consistency of the witness's statements. The administrative law judge concludes that Ms. Namanny's testimony was inconsistent. Mr. Bonz's testimony was both consistent and plausible.

The administrative law judge concludes that the separation was a discharge initiated by the employer, not for misconduct, but because Mr. Bonz could not drive for a period of six months.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

Disqualification following a discharge is appropriate if, and only if, the discharge was because of misconduct. The administrative law judge finds no misconduct in Mr. Bonz suffering a seizure. He finds the employer's later testimony that Mr. Bonz reported to work on February 4, 2009,

after being told not to do so to lack credibility. No disqualification may be imposed because of the separation.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The remaining question is whether Mr. Bonz meets the eligibility requirement of being able to work and being available for work.

Mr. Bonz testified without contradiction that he can still work as a photographer, his primary occupation. He has testified without contradiction that he can make and has made arrangements for transportation to offset his temporary restriction from driving. The administrative law judge concludes that the claimant has met the eligibility requirements of Iowa Code section 96.4-3.

DECISION:

The unemployment insurance decision dated March 20, 2009, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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