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

JAMIE CONNETT	:	
	:	**HEARING NUMBER:** 21B-UI-04330
Claimant	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD**
	:	**DECISION**
CSOI CORP	:	
	:	
Employer	:	

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: 96.5-1, 24.26-4

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Jamie Connett (Claimant) worked for CSOI Corporation (Employer) as a full-time assistant manager. The Claimant's immediate supervisor was Manager Lauren Anderson.

On March 8, 2020, the Claimant submitted her resignation effective March 22, 2020 to Ms. Anderson. The Claimant explained that she was going to work for a tanning salon her boyfriend's mother owns. (Exhibit 1). However, the Claimant offered to fill in until her replacement was hired and if the Employer was short staffed for other shifts. In this capacity, the Claimant was paid more than most clerks due to her experience, but she performed a clerk's role on an as-needed fill-in basis. At the time she resigned, the Claimant had a firm job offer, but she was unable to start because the other business closed due to Covid19 restrictions.

For the biweekly pay period ending March 27, 2020, the Claimant received from the Employer a paycheck reflecting a full-time schedule of 80 hours.

For the biweekly pay period ending April 10, 2020, the Claimant received from the Employer a paycheck reflecting 8.00 hours worked.

For the biweekly pay period ending April 24, 2020, the Claimant received from the Employer a paycheck reflecting 8.50 hours worked.

For the biweekly pay period ending May 22, 2020, the Claimant received from the Employer a paycheck reflecting 16.50 hours.

On May 8, 2020, the Employer terminated the on-call relationship between the parties.

REASONING AND CONCLUSIONS OF LAW:

Legal Standards: Iowa Code section 96.5(1) provides:

> An individual shall be disqualified for benefits: Voluntary Quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Generally a quit is defined to be "a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces." 871 IAC 24.1(113)(b). Furthermore, Iowa Administrative Code 871—24.25 provides:

> Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5.

Since the Employer had the burden of proving disqualification the Employer had the burden of proving that a quit rather than a discharge has taken place. The Iowa Supreme Court has thus been explicit: "the employer has the burden of proving that a claimant's departure from employment was voluntary." *Irving v. EAB*, slip op at 57, No. 15-0104 (Iowa 6/3/2016)(amended 8/23/16); On the issue of whether a quit is for good cause attributable to the employer the Claimant had the burden of proof by statute. Iowa Code §96.6(2). "[Q]uitting requires an intention to terminate employment accompanied by an overt act carrying out the intent." *FDL Foods, Inc. v. Employment Appeal Board*, 460 N.W.2d 885, 887 (Iowa App. 1990), *accord Peck v. Employment Appeal Board*, 492 N.W.2d 438 (Iowa App. 1992).

The rules establishing that doing just on-call work is not considered being attached to the labor market are also relevant to this case. *See* 871 IAC 24.22(i)(3); 871 IAC 24.22(2)(i)(3).

Analysis: The Claimant clearly quit the job she was working when she earned her wage credits. She offered to do some fill-in work and she continued to work for the Employer as an on-call worker until the Employer terminated this relationship. We agree with the Administrative Law Judge that the termination of the on-call job was not disqualifying. But we disagree with the Administrative Law Judge and instead find that the quit was disqualifying. We base this on the law and on policy.

First, it is clear that the relationship the parties had before the quit was *much* different than the occasional on-call work they had after the quit. Although the situation is not a common one, the precedent suggests that a request to move from full-time to occasional part-time work is itself a quit of the full-time work, and the only issue is whether the worker has requalified for benefits through the part-time earnings. *E.g. Hogenson v. Brian Knox Builders*, 361 N.W.2d 163 (Minn.Ct.App. 1985); *Freeman v. D.C. Dept. of Employment Servc.*, 568 A.2d 1091, 1093 (D.C. 1990). The Iowa regulations, furthermore, focus on who initiated the separation. Here it is clear that had the Claimant not quit back in March she would be still working there. Neither her move to on-call work, nor her loss of the on-call work would have happened had she not quit back in March. The Claimant intended to quit the job she had, that is, the job she earned her wage credits doing, and she took the overt act of explicitly saying she quit. This is a disqualifying voluntary leaving of work, and it does not cease to be so merely because she continued as a causal employee doing on-call work as a way of wrapping things up. Afterall, had the Claimant indeed worked until a replacement was hired she would no longer be needed, and according to the terms of their arrangement she would stop working in any capacity for the Employer. Normally, the ending of a set-term contract is not disqualifying. 871 IAC 24.26(22). This being the case, would we allow benefits for a Claimant who quit merely because the Claimant had stayed until a replacement was hired? Of course not. In such a case, as in this one, the quitting is the event that initiated the separation, and the end of the on-call work is merely a delayed effect of the quit.

Second, it would make no sense for this Employer to end up being charged for benefits on the regular full-time job that the Claimant quit. The idea of the Employment Security Law is that if a worker loses employment through no fault of her own then she should be able to collect benefits which are calculated based on her wage history, and which are chargeable to the Employer who caused the period of unemployment. But this Employer did not cause the period of unemployment, and the Claimant is **not** seeking benefits through no fault of her own. Furthermore, the approach of the Administrative Law Judge would discourage employers from providing occasional work to former employees, and discouraging employment is the opposite of the goals of the Employment Security Law.

To be perfectly clear, the Claimant did nothing wrong. She left for other work, and the Pandemic intervened. By "fault" we mean only that the Claimant caused the period of unemployment at issue in the case, not that she did anything blameworthy. *See Amana Refrigeration v. IDJS*, 334 N.W.2d 316, 319 (Iowa App. 1983) ("The word 'fault,' as used in this context, is not limited to something worthy of censure but must be construed as meaning failure of volition.") (*citing Moulton v. Iowa Employment Security Commission*, 239 Iowa 1161, 1172-73, 34 N.W.2d 211, 217 (1948)); *accord Wolf's v. IESC,* 59 N.W.2d 216, 220 (Iowa 1953). For the purposes of our statute the regular job loss here was a voluntary leaving of employment, and the Claimant was not unemployed through no fault of her own.

Requalification: Because we find the Claimant quit back in March she must earn 10 times her weekly benefit amount since March 22, 2020. We have detailed the hours worked for this employer since March 22, 2020 and before the separation of the on-call work. The wages earned during these times total $584. We find that these wages *should* count towards requalification. We say so explicitly because normally wages earned with the same employer would not count. In the circumstances of this case they should.

PUA Benefits: We point out to the Claimant that although the Claimant is denied benefits under state unemployment law, **this does not bar receipt of certain special pandemic related benefits**. In fact, being ineligible from state unemployment benefits is a prerequisite to some of these benefits. Of particular interest to the Claimant is Pandemic Unemployment Assistance [PUA]. The Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, Sec. 2102, in conjunction with the Continued Assistance Act, Public Law No: 116-260, and the American Rescue Plan Act, Public Law No: 117-2, provide for unemployment benefit assistance to any covered individual for any weeks beginning on or after January 27, 2020 and ending, in Iowa, on or before June 12, 2021, during which the individual is unemployed, partially unemployed, or unable to work due to COVID–19.

A person who is monetarily **ineligible** for regular state benefits may still receive PUA, with the benefit amount calculated based on the 2019 calendar year as the base period, although in no event will the weekly benefit amount be below a specified minimum.

The CARES Act provides benefits to persons who are unavailable for work due to certain pandemic related reasons, or who lost work as a direct result of the Pandemic. Such persons may be able to collect PUA during any week this situation persists, going back to February 8, 2020 (for a maximum of 39 weeks). The federal Department of Labor has instructed that **eligible persons would include**:

> g) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency. ...
>
> j) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency. ...

UIPL 16-20, Attachment 1.
(https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Attachment_1.pdf).

In most cases, federal law requires all PUA claims to be backdated to as early as February 8, 2020 depending on when the applicant's COVID-related unavailability or job loss began. What this means is that the fact that the Claimant would have started to work at the tanning salon, but that offer of work was withdrawn because of the Pandemic, may very well mean she qualified for PUA benefits. These are paid for the same period, and in the same amount, as regular benefits. Our ruling today, as we have said, does not bar the Claimant from collecting these benefits, at least during the period prior to requalifying for regular benefits. Notably PUA is chargeable to the federal government, not former employers.

Should the Claimant wish to apply for PUA, the information on how to do so is found at:
https://www.iowaworkforcedevelopment.gov/pua-information .

DECISION:

The administrative law judge's decision dated April 15, 2021 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was quit but not for good cause attributable to the employer. Accordingly, she is denied benefits until such time since March 22, 2020 that the Claimant has worked in and was paid wages for insured work equal to ten times the Claimant's weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(1)(g).

The Board remands this matter to the Iowa Workforce Development Center, Benefits Bureau, for a calculation of the overpayment amount based on this decision.

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James M. Strohman

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Ashley R. Koopmans

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Myron R. Linn

RRA/fnv