

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**HARRY K WILSON**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 20A-UI-04054-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

On May 15, 2020, the claimant filed an appeal from the May 7, 2020, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on June 1, 2020. Claimant participated. Employer participated through human resource manager Stacy Sassman and was represented by Barbara Buss.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Was the claimant overpaid unemployment insurance benefits?  
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 21, 2005. Claimant last worked as a part-time maintenance worker. Claimant was separated from employment on March 23, 2020, when he took a temporary leave of absence due to his age and underlying health conditions making him at risk for COVID 19.

Claimant is 82-years old and had a heart valve replaced a few years ago. At his children's urging, claimant spoke to human resource manager Stacy Sassman about taking a leave of absence due to his high risk factors for COVID 19. Sassman agreed claimant should take a leave of absence. Employer has work available for claimant. Claimant recently saw his medical provider who would not release him to return to work due to his risk factors if he develops COVID 19.

Employer will allow claimant to return to work when he is able to do so.

Since filing this claim for unemployment insurance benefits, but prior to being disqualified, claimant received regular, state-funded benefits in the amount of \$1,835.00 for the five weeks ending May 2, 2020. Claimant also received \$3,000.00 in Federal Pandemic Unemployment Compensation (FPUC) for the five weeks ending May 2, 2020.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant is temporarily separated from the employment without good cause attributable to employer.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(35) 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. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

In this case, claimant is temporarily unemployed due to underlying conditions that make him at high risk if he contracts COVID 19. Claimant's medical provider has not released claimant to return to work. Employer has work available for claimant, but claimant has not been able to return to work to offer his services. The temporary separation is not with good cause attributable to employer.

Claimant is not eligible for regular, state-funded unemployment insurance benefits. Even though claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. **Claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.**

Since the original decision remains in effect and claimant is disqualified from receiving regular, state-funded unemployment insurance benefits, the next issue in this case is whether the claimant was overpaid unemployment insurance benefits prior to the denial decision being issued.

Iowa Code § 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

Since the decision disqualifying the claimant remains in effect, the claimant was overpaid \$1,835.00 in regular, state-funded unemployment insurance benefits. Claimant is required to repay those benefits.

The administrative law judge additionally concludes claimant has been overpaid Federal Pandemic Unemployment Compensation.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the

amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Here, the claimant is disqualified from receiving regular unemployment insurance (UI) benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation (FPUC). In addition to the regular UI benefits claimant received, claimant also received an additional \$3,000.00 in FPUC benefits for the five weeks ending May 2, 2020. Claimant is required to repay those benefits.

**DECISION:**

The May 7, 2020, (reference 01) unemployment insurance decision is affirmed. Claimant is temporarily separated from employment without good cause attributable to the employer. Claimant is not eligible for regular, state funded unemployment insurance benefits based on this separation from employment and has been overpaid regular state-funded benefits in the amount of \$1,835.00 and FPUC benefits in the amount \$3,000.00. Claimant will have to repay these benefits, unless he applies for and qualifies for Pandemic Unemployment Assistance and the corresponding FPUC benefits that are allowed with those benefits. SEE INSTRUCTIONS BELOW.



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Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

June 16, 2020  
Decision Dated and Mailed

cal/scn

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.