

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JUSTIS HOOK**  
Claimant

**ANKENY HEALTH CARE ENTERPRISES  
LLC**  
Employer

**APPEAL NO. 20A-UI-05869-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/10/20**  
**Claimant: Respondent (2/R)**

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Iowa Code Section 96.5(1) – Voluntary Quit  
Iowa Code Section 96.3(7) – Recovery of Overpaid Benefits  
Public Law 116-136, Section 2104(b) – Federal Pandemic Unemployment Compensation.

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 5, 2020, reference 01, decision that allowed benefits to the claimant provided claimant was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant left for compelling personal reasons for a period not exceeding 10 days, that the claimant attempted to return to the employment, and that the employer did not make work available. After due notice was issued, a hearing was held on July 10, 2020. Claimant Justis Hook did not provide a telephone number for the hearing and did not participate. Attorney Jay Helton represented the employer and presented testimony through Mike Anderson, Administrator, and Stacia Smith, Business Office Manager. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO and KPYX) and received Exhibits 1 and 2 into evidence. The June 4, 2020 fact-finding materials were not available at the time of the appeal hearing.

**ISSUE:**

Whether the claimant voluntarily quit without good cause attributable to the employer.  
Whether the claimant has been overpaid regular benefits.  
Whether the claimant has been overpaid Federal Pandemic Unemployment Compensation that the claimant must repay.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Justis Hook was employed by Ankeny Health Care Enterprises, L.L.C., doing business as Sunny View Care Center, as a full-time Certified Nursing Assistant. Ms. Hook began her employment in May 2019 and last performed work for the employer on April 20, 2020. Lisa Grogan, Director of Nursing, was Ms. Hook's primary supervisor. The nurse on duty during a particular shift would also have supervisor authority over Ms. Hook's work.

On April 20, Ms. Hook left work early. The employer does not require employees to provide a reason for an absence and did not document a reason for Ms. Hook's early departure.

Ms. Hook was next scheduled to work on April 21 or 22, 2020. While Mike Anderson, Administrator, indicates the scheduled shift April 21, Ms. Grogan documented an absence from a 6:00 a.m. to 2:00 p.m. scheduled shift on April 22. Ms. Hook notified the employer of her need to be absent from the shift. The employer requires notice be given at least one hour prior to the scheduled start of the shift. The employer reviewed this requirement with Ms. Hook at the start of the employment. The employer accepts phone calls, text messages and emails as proper notice. The employer does not know what time Ms. Hook provided notice and does not know why Ms. Hook was absent.

Ms. Hook was next scheduled to work on April 23, 24 and 27, 2020, but did not appear or provide notice that she would be absent. Under the employer's written attendance policy, two no-call/no-show absences are deemed a voluntary quit. The policy is contained in the handbook the employer provided to Ms. Hook on her first day in the employment. Ms. Hook did not attempt to return to the employment after her extended absence. Prior to the no-call/no-show absences, the employer was willing to let Ms. Hook continue in the employment. They found it difficult to fully staff its facility in the context of the COVID-19 pandemic. After the no-call/no-show absences, the employer was not willing to allow Ms. Hook to continue in the employment.

Ms. Hook established an original claim for benefits that was effective May 10, 2020. This employer is a base period employer in connection with the claim. Iowa Workforce Development set Ms. Hook's weekly benefit amount at \$304.00. Ms. Hook received \$608.00 in regular benefits for the two weeks between May 10, 2020 and May 23, 2020. Ms. Hook also received \$1,200.00 in Federal Pandemic Unemployment Compensation for that same two weeks. On June 4, 2020, an Iowa Workforce Development deputy held a fact-finding interview that addressed Ms. Hook's separation from the employment.

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

Iowa Code section 96.5(1) 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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992).

Iowa Admin. Code r. 871-24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The evidence in the record establishes a voluntary quit without good cause attributable to the employment, based on Ms. Hook's three consecutive no-call/no-show absences on April 23, 24 and 27, 2020. The absences are in violation of the employer's no-call/no-show policy. The quit was effective April 27, 2020. Ms. Hook is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times the weekly benefit amount. Ms. Hook must meet all other eligibility requirements. The employer's account shall not be charged for benefits for the period beginning May 24, 2020.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

The matter of deciding the amount of the overpayment of *regular* benefits and whether the amount overpaid should be recovered from the claimant or charged to the employer under Iowa Code § 96.3(7)(b) is remanded to the Benefits Bureau.

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...

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, the claimant is also disqualified from receiving Federal Pandemic Unemployment Compensation (FPUC). The \$1,200.00 in FPUC benefits the claimant received for the two-week period ending May 23, 2020 constitutes an overpayment of benefits. Claimant is required to repay the overpaid FPUC benefits.

**DECISION:**

The June 5, 2020, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective April 27, 2020. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits for the period beginning May 24, 2020. The matter of deciding the amount of the overpayment of *regular* benefits and whether the amount overpaid should be recovered from the claimant or charged to the employer under Iowa Code § 96.3(7)(b) is remanded to the Benefits Bureau. The claimant is overpaid \$1,200.00 in FPUC benefits and must repay the overpaid benefits.

*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. *If this decision becomes final or if you are not eligible for Pandemic Unemployment Assistance (PUA), you may have an overpayment of benefits that you will be required to repay.* 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>.



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James E. Timberland  
Administrative Law Judge

July 20, 2020  
Decision Dated and Mailed

jet/sam