

PL116-136, Sec. 2104(f)(2). In this case the Claimant was allowed benefits and the Employer appealed. After the hearing, the Employer prevailed. We note that Claimants are advised throughout the appeal process to continue to file weekly claims even if denied benefits. The Claimant here did so and was paid benefits until the Administrative Law Judge issued the appeal decision locking the claim. The Claimant was paid FPUC in addition to regular state benefits. We now consider whether the FPUC overpayment can be waived.

In deciding the question of fault, we will consider factors such as whether a material statement or representation was made by the Claimant in connection with the application for benefits, whether the Claimant knew or should have known that a fact was material and failed to disclose it, whether the Claimant should have known the Claimant was not eligible for benefits, and whether the overpayment was otherwise directly caused by the knowing actions of the Claimant. In deciding equity and good conscience we consider whether the overpayment was the result of a decision on appeal, and the financial hardship caused by a decision requiring overpayment. *Cf.* 871 IAC 24.50(7) (setting out factors for similar issue under TEUC from 2002). Applying these factors to the totality of the circumstances in this case including that there is no evidence of material misrepresentation, we find on this individualized basis that the **FPUC overpayment** should be waived.

The Employer should note that the Employer will not be charged for any waived FPUC.

DECISION:

The decision of the Administrative Law Judge dated **September 11, 2020** is **AFFIRMED AS MODIFIED IN THE CLAIMANT'S FAVOR** but with **NO EFFECT ON THE EMPLOYER**.

The overpayment of \$10,200 in FPUC benefits is hereby waived, and the Claimant has no obligation to pay back those benefits. The Claimant continues to be obliged to repay the overpayment of \$4,704 in state benefits. The Employer will not be charged for waiver of FPUC since FPUC is a federally funded benefit. In all other respects the decision of the Administrative Law Judge is affirmed.

Ashley R. Koopmans

James M. Strohmman

DISSENTING OPINION OF MYRON R. LINN:

I respectfully dissent from the majority decision of the Employment Appeal Board. After careful review of the record, I would affirm the decision of the administrative law judge without modification.

Myron R. Linn

The Claimant has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not follow the instructions on the notice of hearing. Therefore, good cause has not been established to remand this matter. The remand request is **DENIED**.

Ashley R. Koopmans

James M. Strohman

Myron R. Linn

AMG/fnv