

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

JOSHUA VOSHELL

Claimant

and

FAREWAY STORES INC

Employer

HEARING NUMBER: 20BUI-03168

EMPLOYMENT APPEAL BOARD
DECISION

NOTICE

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, 96.5-2-A

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

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

FINDINGS OF FACT:

We have accepted the new and additional evidence submitted by the Employer, without going through our usual process of giving the other party ten days to respond. This is because in this case the new and additional results in the fund being charged for the overpayment of state benefits rather than the Employer. This change makes no difference to the Claimant one way or the other.

The Administrative Law Judge's findings of fact are adopted by the Board as its own. The Board makes the following additional findings of fact.

The Employer was never called by Iowa Workforce at the scheduled fact finding of March 31. The Employer called six times but was disconnected twice, and unable to get through the other four times. During the three weeks including the week of the March 31 fact finding, the previous week, and the following week, Iowa Workforce received over 164,000 initial claims. This is 10,000 more than Iowa

Workforce received in all of calendar year 2019.

UI-03168

REASONING AND CONCLUSIONS OF LAW:

The Board adopts the Administrative Law Judge's Reasoning and Conclusions of Law except those pertaining to chargeability of the overpayment of regular state benefits in lieu of which we set out our analysis below.

The Employer appealed to the Board the Administrative Law Judge's determination to charge the Employer for the overpayment based on the Administrative Law Judge's decision that the Employer failed to participate in fact finding.

The Claimant cannot be charged for the overpayment of **regular state benefits** (the \$734). Unless fraud or misrepresentation is shown, "benefits shall not be recovered" from a claimant if the employer does not participate in fact finding. We take the provision at its literal word. Finding no fraud, we thus affirm that the overpayment of **regular state benefits** (\$734) cannot be charged to the Claimant.

As for the Employer the Code states that an employer is to be charged if "the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits..." Iowa Code §96.3(7)(b)(1)(a). Here the Employer did respond to the notice of a fact finding conference by calling in. The Employer supplied a number but was not called. As we found Iowa Workforce was in the middle of an historic level of initial claims at the time. Thus, the Employer was unable to get through when it called six times. We cannot say that benefits were paid because the Employer failed to respond timely or adequately to the Department's request for information relating to the payment of benefits. The Employer thus cannot be charged for the overpayment. Since neither party is to be charged for the overpayment of state benefits then the \$734 overpayment is absorbed by the fund – as was the case between 2008 and 2013.

We note that the Claimant did not appeal the disqualification issue to us, so the Claimant **remains disqualified** for regular state benefits on this and future claims until such time as he earns ten times his weekly benefit amount. As a result of our decision the Claimant is still not eligible for benefits until he requalifies, he will continue to be **not** responsible for paying back the overpayment of regular benefits (\$734), but **he will continue** to be responsible for paying back the FPUC of \$1,200.

DECISION:

The administrative law judge's decision dated May 14, 2020 is **REVERSED ON THE ISSUE OF OVERPAYMENT CHARGING OF REGULAR BENEFITS**. The overpayment entered in the amount of \$734 is **not** chargeable to the Claimant and furthermore is also **not** chargeable to the Employer. The Claimant is relieved of the responsibility to pay back the overpayment of \$734 in regular state unemployment, and the Employer's account is not to be charged for those overpaid benefits. Instead, the overpayment of regular state benefits in this matter is chargeable to the fund.

03168

Claimant remains disqualified based on the Administrative Law Judge's decision because the issue of disqualification was never appealed to us. For the same reason the Claimant remains responsible for paying back the \$1,200 in Federal Pandemic Unemployment Compensation (FPUC) as ruled by the Administrative Law Judge.

Ashley R. Koopmans

James M. Strohman

Myron R. Linn

RRA/fnv