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

CRYSTAL HODGE

Claimant

HEARING NUMBER: 21B-UI-15879

EMPLOYMENT APPEAL BOARD DECISION

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: 96.3-7

D E C I S I O N

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

The Board writes further to explain in more detail the basis of its decision.

Although the Claimant requests a waiver of her overpayment of regular state benefits, we have no legal basis for doing so. Back in the 1970's things were briefly different. But a lot of water has gone under the bridge in the decades since.

In *Galvin v. Iowa Beef Proc*., 261 N.W.2d 701 (1978) the Iowa Court cast doubt on anyone having to pay back benefits received in good faith while an appeal was pending. Shortly after *Galvin* the legislature made express that overpayments are to be recovered "unless the recovery would be contrary to equity or good conscience." 67 G.A. ch. 1059, §3. According to the Iowa Supreme Court this amendment was "enacted in response to *Galvin*" and "might well" alter *Galvin* even with excusing only good faith overpayments. *Hiserote Homes, Inc. v. Riedemann*, 277 N.W.2d 911, 915 (Iowa 1979). But the statutory good faith exception prevailed for but a single year. In 1979 the good faith provision was struck and the first unnumbered paragraph (now letter "a") made to read simply that "the benefits shall be recovered." Iowa Code §96.3(7)(2021) *as amended by* 68 G.A. ch 33, §§1-5. What the legislature did over 40 years ago was strike "unless the recovery would be contrary to equity or good conscience." The provision now reads:

> 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**.

Iowa Code §96.3(7)(a)(2021). *Galvin* has been statutorily reversed for many years. As more recently explained by the Iowa Court of Appeals, "[t]his provision requires repayment notwithstanding [a Claimant]'s lack of fault in incurring the overpayment." *Powell v. Employment Appeal Bd*., 861 NW 2d 279, 281 (Iowa 2014).

Thus in *Sievertsen v. Employment Appeal Board*, 483 N.W.2d 818 (Iowa 1992) a claimant needed to satisfy the $250 earnings requirement to be eligible for benefits in a second benefit year. "Claimant endeavored to obtain the required $250 in covered wages through employment at Marycrest College as a carpenter. At the time, he was a full-time student at Marycrest. The record reflects that claimant specifically asked DES representatives whether this employment would serve to qualify him for continued unemployment eligibility and was given the assurance that it would." *Sievertsen* at 819. After Mr. Sievertsen had collected benefits with the imprimatur of the agency the agency realized it had made an error of law. Then Mr. Sievertsen was then socked with an overpayment. The Supreme Court concluded that, despite the error a by the agency and the fact that the claimant had been pre-approved to apply for benefits, there was no basis for preventing recovery of the overpayment. The Court specifically rejected the notion that the agency could be estopped. The Court cited to Iowa Code §96.3(7), and found "[w]e believe that the authorities cited preclude a finding that the Department of Employment Services is estopped from recouping the payments made to the claimant for which he was ineligible under the controlling regulations." *Sievertsen* at 819.

In *Bailey v. Employment Appeal Board*, 518 N.W.2d 369 (Iowa 1994) the Court was confronted with Public Law 102-64 (1991), the Emergency Unemployment Compensation Act of 1991. That federal emergency benefits law had a repayment provision allowing the states to waive overpayment of emergency benefits if they wished (it was identical to the ones now in force for the federal benefits of PUA, PEUC, FPUC, and LWA). The Iowa Supreme Court pointed out that "while the federal statute quoted above provides that a state may waiver repayment, Iowa has elected not to do so." *Bailey*, 518 N.W.2d at 370. The Court noted that "the only discretion on the part of the agency is to give the recipient more repayment flexibility if the overpayment was made by error, as opposed to misrepresentation" but that "[i]n either case, the benefits must be repaid." *Bailey* at 370. The presence of good faith, the waiver of federal overpayments, and the lack of fault simply are not enough to negate the fact that the Claimant must pay back her state benefit overpayment.

While Claimant complains mightily of delay, this fails to avail her. First, and most fundamentally, the delay here did not affect the overpayment in any way. It did not increase the wait for the money – all the overpaid money was paid out before the remand. For the same reason, the delay did not cause the overpayment to increase. And again for the same reason, the delay was not the cause of the claimant getting the money in the first play. Not the remand, and not the delay in resolving the remand caused the overpayment. Second, there is no law that waiting before you find out how much you owe is all by itself a violation of a general right to "know fast." There must be some tangible prejudice caused by the delay, and here there is none shown in the record. We note that the claim has not at any time been locked, and that the Claimant has thus continued to collect benefits. Third, Iowa experienced its highest unemployment rate ever in April of 2020. Claims filings were at a historic level. In just the nine weeks from March 21 through May 16, 2020 IWD received more than double all of FY 2019 initial claims. Things only gradually got better. So, of course, it took longer than usual to resolve this case. All this makes clear that if we were to waive every overpayment decision that took longer than usual in 2020, there would be no money left in the fund. *See Messina v. IDJS*, 341 N.W.2d 52, 61 (Iowa 1963)("the state unemployment compensation fund has not been and is not now a bottomless and overflowing source of money.")

As for estoppel **none** of the criteria are satisfied. The elements of equitable estoppel are (1) a false representation or concealment of material facts; (2) lack of knowledge of the true facts on the part of the actor; (3) the intention that it be acted upon; and (4) reliance thereon by the party to whom made, to his prejudice and injury. *ABC Disposal Systems, Inc. v. Department Of Natural Resources,* 681 N.W.2d 596, 606 (Iowa 2004). Estoppel is generally to be proved by the defendant by clear and convincing evidence. *Johnson v. Johnson*, 301 N.W.2d 750 (Iowa 1981). The burden is even greater when estoppel is asserted against the government. The Iowa Supreme Court has instructed as recently as May of 2020 that "as a general rule, equitable estoppel will not lie against a government agency." *Endress v. Iowa Department of Human Service*, 944 N.W.2d 71, 94 (2020) (*quoting ABC Disposal Sys*., Inc. v. Dep't of Nat. Res., 681 N.W.2d 596, 607 (Iowa 2004)). The *ABC* case quoted in *Endress* was expounded upon by the Iowa Supreme Court in *Fennelly v. A-1 Machine & Tool Co.,* 728 NW 2d 163, 180 (Iowa 2006) where Justice Cady explained that the required special circumstances that would allow governmental estoppel include that the "party raising the estoppel proves affirmative misconduct or wrongful conduct by the government or a government agent." *Fennelly* at 180. The rule is that "the doctrine of estoppel may be raised against the government only if, in addition to the traditional elements of estoppel, the party raising the estoppel proves affirmative misconduct or wrongful conduct by the government or a government agent." *Poyner v. Iowa District Court for Montgomery County*, slip op. at p. 3 (Iowa App. 7/10/2003) (quoting 28 Am. Jur. 2d Estoppel & Waiver § 140 at 559 (2000)). Hence the elements and their resolution are:

1. False representation	None appears in the record
2. Lack knowledge of true facts	No false statement, so this is not satisfied
3. Intention that falsity be acted upon	No false statement so this not satisfied
4. Detrimental Reliance	No false statement. Plus the remand took place *after* the claimant had already filed for benefits and received the money.
5. Wrongful government conduct	Nothing but doing the best you can in the middle of a historically high unemployment claims has been shown.

The claim of estoppel has no merit even assuming that the doctrine applied to unemployment overpayments. We dispose of this case on the ground that we clearly have no legal basis for excusing an overpayment of regular benefits just because the decision took a long time.

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James M. Strohman

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Ashley R. Koopmans

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Myron R. Linn

RRA/fnv