

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

SUZANNE D REID

Claimant

:
:
:
:
:
:
:
:
:
:

HEARING NUMBER: 21B-UI-09261

**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. With the following modification, 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** with the following **MODIFICATION**:

At this time, the board modifies the overpayment by reducing the amount by \$4,368 which is the amount paid after 5/12/20. Currently the evidence in the record does not show that the Claimant received these sums or that she is responsible for them being paid out. IWD can recover non-fraud overpayments from future unemployment benefits, it can recover from an income tax refund, a federal income tax refund, a lottery prize, or a vendor payment. 871 IAC 21.1(1)(b)(2); 871 IAC 25.8(1); 871 IAC 25.16. As a practical matter removing the overpayment pending the outcome of the investigation, versus leaving it in place pending the outcome of the investigation (as the ALJ did) makes little difference since we expect the investigation to be completed before tax refund season, and the Claimant is not currently on claim status. We merely conform our ruling to the current state of the evidence. In case 20B-UI-08760 we expressly provided that "should the remand reveal fraud on behalf of the Claimant in obtaining any week of benefits then the FPUC overpayment may be reinstated for such a week." Today we make a similarly contingent ruling for the regular benefits.

To be clear, we are willing to credit the Claimant's testimony *at this time*. Any additional evidence developed by investigations and recovery may confirm this judgment or it may undermine it. The matter has been referred to investigations and recovery. Should the investigation, and ensuing process, link the bank account, or the weekly claims, in question to the Claimant then the overpayment may be reinstated along with any other appropriate remedy. But at this time the sworn testimony by the Claimant is that she has no responsibility for these payments. Should this prove false following the investigatory finding, and any appeals therefrom, it will be a different matter.

The Claimant's overpayment is reduced to \$2,451 pending the outcome of the investigation and any ensuing process. The overpayment of regular benefits is thus reduced by \$4,368 but should the remand reveal that the Claimant was responsible for the payment of any week of benefits then the overpayment may be reinstated for such a week.

James M. Strohman

Ashley R. Koopmans

Myron R. Linn

AMG/fnv