

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

JAMIE K WELSH

Claimant

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HEARING NUMBER: 21B-UI-01924

**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: 96.3-7

DECISION

The Claimant appealed this case to the Employment Appeal Board. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, 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 IN THE CLAIMANT'S FAVOR BUT WITHOUT EFFECT ON THE EMPLOYER**:

Division I

The Administrative Law Judge's discussion of the recovery of overpaid benefits is modified to be consistent with the following discussion:

The CARES Act provides:

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, **except** that the State agency may waive such repayment if it determines that—

(A) the payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual; and

(B) such repayment would be contrary to equity and good conscience

PL116-136, Sec. 2104(f)(2). In this case the Claimant was disallowed benefits but the funds were released anyway. 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.

If after today the Claimant should receive an overpayment decision concerning the overpayment(s) we have waived then the Claimant should appeal that decision. The Claimant should retain our decision to present to IWD in response to any such decision. The Claimant likewise should present this order to IWD if the Claimant should receive a bill for a waived overpayment.

Division II

We point out to the Claimant that although the Claimant is denied benefits under state unemployment law, **this does not bar receipt of certain special pandemic related benefits**. In fact, being ineligible from state unemployment benefits is a prerequisite to some of these benefits. Of particular interest to the Claimant is Pandemic Unemployment Assistance [PUA]. That law provides benefits to persons who are unavailable for work due to certain pandemic related reasons, or who lost work as a direct result of the Pandemic. Such persons may be able to collect PUA during any week this situation persists, potentially as far back as February 8, 2020, for most cases. The federal Department of Labor has instructed that **eligible persons would include:**

- f. The individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19

UIPL 16-20, Attachment 1.

(https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Attachment_1.pdf).

In most cases, federal law requires all PUA claims to be backdated to as early as February 8, 2020 depending on when the applicant's COVID-related unavailability or job loss began. The upshot is that if Claimant can make the necessary PUA showing Claimant may very well be eligible for PUA for any qualifying week. **Our ruling today is no bar to PUA.**

Notably today we have made a decision that denies regular unemployment, but allows regular benefits once the Claimant offers to return to work, but is rejected. 871 IAC 24.22(2)(j)(1) ('If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.'). This means if the Claimant can get PUA the Claimant would receive the PUA benefit so long as the Claimant is unavailable because on a leave of absence for COVID reasons.

Should the Claimant wish to apply for PUA, and the information on how to do so is found at:
<https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The decision of the Administrative Law Judge dated **March 8, 2021** is **AFFIRMED AS MODIFIED IN THE CLAIMANT'S FAVOR** but with **NO EFFECT ON THE EMPLOYER**.

Any overpayment of FPUC benefits which were collected for the ten weeks-ending May 30, 2020 which overpayment has been found or which may hereafter be found, is hereby waived, and the Claimant has no obligation to pay back those benefits (to a maximum of \$5,400).

This waiver is conditioned so that the waiver is only effective if the payment of waived benefits was as a result of the regular benefit claims at issue in this case. Furthermore, this waiver applies only if the Claimant does not receive FPUC as a result of other types of benefits paid during the weeks at issue in this case. If the Claimant does receive a second FPUC payment covering the same period of time as this case, then Claimant will not be allowed to retain the double payment.

The Claimant continues to be obliged to repay the \$2,133.65 overpayment in state benefits at this time since state law does not permit waiver of such overpayments. The Employer will not be charged for waiver of FPUC since it is a federally funded benefits. In all other respects the decision of the Administrative Law Judge is affirmed.

James M. Strohman

Ashley R. Koopmans

CONCURRING & DISSENTING OPINION OF MYRON R. LINN:

I concur in Division II of the majority decision. I respectfully dissent from Division I of the majority decision of the Employment Appeal Board. After careful review of the record, I would not waive any FPUC overpayment.

Myron R. Linn