

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

JEREMY FREY

Claimant

and

WELLS FARGO BANK NA

Employer

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HEARING NUMBER: 21B-UI-15050

**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: 96.5-2-A, 96.3-7

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

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**:

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

The CARES Act, as amended, 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 paid FPUC in addition to regular state benefits.

In addition, the CARES Act, as amended, also provides:

SEC. 2107. PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION.

(e)(2) Repayment.--In the case of individuals who have received amounts of pandemic emergency unemployment compensation under this section to which they were not entitled, the State shall require such individuals to repay the amounts of such 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 pandemic emergency 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); 2107(e)(2). In this case the Claimant was paid PEUC.

We now consider whether the FPUC and PEUC overpayments 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. *Cf.* 871 IAC 24.50(7) (setting out factors for similar issue under TEUC from 2002). In deciding equity and good conscience we utilize the federal directives by considering the following:

- It would cause financial hardship to the person for whom it is sought; or
- The recipient of the overpayment can show (regardless of their financial circumstances) that due to the notice that such payment would be made or because of the incorrect payment either they have relinquished a valuable right or changed positions for the worse; or
- Recovery would be unconscionable under the circumstances.

[UIPL 20-21](#), p. 6-7 (DOL ETA 5/5/2021).

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 and PEUC overpayments** should be waived on the ground that the Claimant's knowing actions were not directly at fault for the overpayment, and recovery would be unconscionable.

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

If after today the Claimant should receive an overpayment decision concerning the overpayments we have waived then the Claimant should appeal those decisions. 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 overpayments.

DECISION:

The decision of the Administrative Law Judge dated September 1, 2021 is **AFFIRMED AS MODIFIED IN THE CLAIMANT'S FAVOR** but with **NO EFFECT ON THE EMPLOYER**.

The overpayments of \$5,100 (FPUC) and \$5,880 (PEUC) are hereby waived, and the Claimant has no obligation to pay back those benefits. The Claimant continues to be obliged to repay any overpayment in state benefits, including any extended benefits, that has been or will be assessed since the law does not permit us to waive the regular state benefit or extended benefit overpayments. The Employer will not be charged for waivers of FPUC, PEUC or LWAP since all are federally funded benefits. In all other respects the decision of the Administrative Law Judge is affirmed.

James M. Strohman

Ashley R. Koopmans

DISSENTING OPINION OF MYRON R. LINN:

After a full review of this matter, including audio testimony, I respectfully disagree with the majority decision. It is my opinion that the majority decision to waive the overpayments of \$5,100 (FPUC) and \$5,880 (PEUC) benefits is contrary to the reason these federal pandemic benefits were designed for unemployed individuals.

The Claimant had a good paying position at a respected Employer. He requested a Leave of Absence to avoid exposure to Covid due to his pregnant girlfriend's compromised immune system. The Claimant provided no medical documentation supporting his leave request. The Employer generously approved a Leave of Absence for a two week period beginning July 15, 2020.

The Claimant did not return to work after the two week period and initiated no contact with the Employer. The Employer, however, attempted unsuccessfully multiple times to contact the Claimant and bring him back to work. After two additional weeks, it became clear in light of the Claimant's lack of response that he had abandoned his position. The Employer reasonably separated the Claimant on August 13, 2020, as a voluntary quit.

The CARES Act was designed to protect Americans from financial hardship, not to provide financial benefits to those who voluntarily decide not to work. There is no link whatsoever that connects the Claimant's lack of response to pandemic-caused unemployment, and the Claimant has no reasonable argument to retain the \$10,880 of federal unemployment funds.

The Administrative Law Judge's decision correctly identified overpayment of both Iowa unemployment compensation benefits along with PEUC and FPUC benefits with a conclusion that both should be repaid by the Claimant.

Therefore, the waiver of the Claimant's overpayments of federal unemployment compensation benefits is not supported by the undersigned board member.

Myron R. Linn

AMG/fnv