

(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 denied benefits and appealed. Despite being denied benefits the State of Iowa decided to release funds to the Claimant pending the outcome of Claimant's appeal. 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 the Claimant obviously did nothing to induce payment since benefits were *denied* from the beginning, 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.

**THE BOARD PROVIDES THE FOLLOWING
DISCUSSION FOR INFORMATIONAL PURPOSES:**

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, going back to February 8, 2020 (for a maximum of 39 weeks). The federal Department of Labor has instructed that **eligible persons would include:**

- a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis. ...
- b) A member of the individual's household has been diagnosed with COVID-19. ...
- c) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19. ...

UIPL 16-20, Attachment 1.

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

It is further our understanding that federal law requires all PUA claims to be backdated to as early as February 8, 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.** Our ruling on the quit would mean if the Claimant can get PUA then once the Claimant comes off PUA the Claimant would have to requalify by earning 10 times the weekly benefit amount before Claimant could receive state unemployment benefits or the Claimant would have to be fully released and return to offer services to the Employer before receiving state benefits.

Notably today we have made a decision that denies regular unemployment, but allows regular benefits once the Claimant is fully released, offers the Claimant's services to the Employer, but is rejected. Iowa Code §96.5(1)(d). (Of course, the Claimant could also requalify for state benefits by earning 10 times the weekly benefit amount since the date of the quit.) This means if the Claimant can get PUA the Claimant would receive the PUA benefit so long as the Claimant is away from work for COVID reasons, and then receive regular state benefits if Claimant is fully released to do the old job at the Employer, returns and offers services to the Employer but is not rehired. The Employer should note it can avoid charges by bringing the Claimant back to work at that time.

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 **October 26, 2020** is **AFFIRMED AS MODIFIED IN THE CLAIMANT'S FAVOR** but with **NO EFFECT ON THE EMPLOYER.**

The overpayment of \$10,200 in FPUC benefits is hereby waived, and the Claimant has no obligation to pay back those benefits. The Claimant continues to be obliged to repay the overpayment of \$9,620 in state benefits at this time. The Employer will not be charged for waiver of FPUC since FPUC is a federally funded benefit. In all other respects the decision of the Administrative Law Judge is affirmed.

Ashley R. Koopmans

James M. Strohman

DISSENTING OPINION OF MYRON R. LINN:

I respectfully dissent from the majority decision of the Employment Appeal Board. After careful review of the record, I would affirm the decision of the administrative law judge without modification. I concur the explanatory comments of the majority decision.

Myron R. Linn

AMG/fnv