

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

TIMOTHY A SCHUMACHER

Claimant

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HEARING NUMBER: 21B-UI-11374

**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: 96.3-7 116-136

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 IN THE CLAIMANT'S FAVOR BUT WITHOUT EFFECT ON THE EMPLOYER:**

The Board adds to the Findings of Fact that the Claimant was approved for PUA benefits in excess of \$100 a week, for all six of the weeks during which LWA is authorized. The Claimant has received only one round of \$1,800 in LWA.

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

The *Continued Assistance for Unemployed Workers Act of 2020* signed into law on December 27, 2020 provides:

SEC. 262. Lost Wages Assistance Recoupment Fairness.

(a) Definitions.—In this section—

(1) the term “covered assistance” means assistance provided for supplemental lost wages payments under subsections (e)(2) and (f) of section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174), as authorized under the emergency declaration issued by the President on March 13, 2020, pursuant to section 501(b) of such Act (42 U.S.C. 5191(b)) and under any subsequent major disaster declaration under section 401 of such Act (42 U.S.C. 5170) that supersedes such emergency declaration; and

(2) the term “State” has the meaning given the term in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(b) Waiver Authority For State Liability.—In the case of any individual who has received amounts of covered assistance to which the individual is not entitled, the State shall require the individual to repay the amounts of such assistance to the State agency, except that the State agency may waive such repayment if the State agency determines that—

(1) the payment of such covered assistance was without fault on the part of the individual; and

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

(c) Waiver Authority For Federal Liability.—Any waiver of debt issued by a State under subsection (b) shall also waive the debt owed to the United States.

H.R. 133, 116 Congress, Sec. 262. In this case the Claimant was paid LWA in addition to regular state benefits. We now consider whether the LWA 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. 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).

To get LWA a claimant has to collect some minimal amount of benefits – of any type. The claimant must “receiv[e] for the week of unemployment with respect to which LWA is sought, at least \$100 of regular UC **or any of the following UC programs... Pandemic Unemployment Assistance (PUA).**” [UIPL 27-20, \(DOLETA August 12, 2020\)](#) (emphasis added). So if an individual claimant gets \$100 worth of PUA this is sufficient to support the \$300 LWA payment. This much is made explicit by the federal Department of Labor in *UIPL 27-20*, issued back in August of 2020. This is the *individual* match requirement. The claimant has to get at least \$100 in non-LWA benefits in order to get LWA. But **all** unemployment benefits, including fully federal benefits like PUA and PEUC, count toward this **individual** \$100. *Id.* If an individuals gets at least \$100 in PUA then they get LWA too. *Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019* (Presidential Memo 08/08/2020) §4(d)(i)(C) (“the term ‘Eligible claimants’ means claimants who...receive, for the week lost wages assistance is sought, at least \$100 per week of any of the following benefits... Pandemic Unemployment Assistance (PUA)...”).

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 LWA overpayment 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. **Most importantly the Claimant was owed \$1,800 in LWA because he collected approved PUA for the six weeks in question, and he was not paid that \$1,800 a second time.** Technically, the \$1,800 paid is overpaid since it was based on overpaid regular benefits, and so a new \$1,800 should be paid separately based on the PUA. But the money comes from the same place so rather than have IWD pay another \$1,800 and then ask for it back, we simply waive the \$1,800 that was already paid. This leaves claimant keeping \$1,800 in LWA which is exactly how much he was due.

The Employer should note that the Employer will not be charged for any waived LWA.

The Claimant should present this order to IWD if the Claimant should receive a bill for this waived overpayment.

DECISION:

The decision of the Administrative Law Judge dated July 19, 2021 is **AFFIRMED AS MODIFIED IN THE CLAIMANT’S FAVOR** but with **NO EFFECT ON THE EMPLOYER.**

The overpayment of \$1,800 in LWA benefits is 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 waiver of LWA since LWA is a federally funded benefit. In all other respects the decision of the Administrative Law Judge is affirmed.

James M. Strohman

Ashley R. Koopmans