

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov**

KRISTINA L HAND

Claimant

: **APPEAL NUMBER:** 22B-UI-15876

: **ALJ HEARING NUMBER:** 22A-UI-15876

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**EMPLOYMENT APPEAL BOARD
DECISION**

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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. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The majority of the Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The disqualification in this matter was made in March of 2021 in case 21A-UI-03815-DZ-T and that decision is now final. In case the Administrative Law Judge ruled "The claimant was overpaid \$1,288.00 in unemployment insurance benefits, which must be repaid" and this finding was adopted by the Board with the addition that whether the first week could be waived under §2105 of the CARES Act was referred to Iowa Workforce to address. The Claimant has presented evidence which, if unrebutted, leads to the inference that on March 28, 2020 Iowa Workforce Development did enter into an agreement pursuant to §2105 of the CARES Act which agreement purported to empower the State of Iowa to waive, in appropriate circumstances, the first week of benefits that had been reimbursed by the federal government under §2105.

REASONING AND CONCLUSIONS OF LAW:

As an initial matter the Claimant is still arguing about whether she should have been allowed benefits in the first place. The substance of the argument is an attempt to amend Iowa's statute through estoppel. Not only is this not a viable argument but more fundamentally it is long past the time that we could address it. As we

found before, back in 2021 the Claimant was disqualified for regular benefits in a final decision issued by Administrative Law Judge Zeno in case 21A-UI-03815-DZ-T on March 22 of 2021. It is too late to challenge that ruling, and so counsel's argument to the contrary cannot change anything. *Kash v. Iowa Dept. of Employment Services, Div. of Job Service*, 476 N.W.2d 82 (Iowa 1991); *Hensley v. Iowa Dept. of Job Service*, 336 N.W.2d 448 (Iowa 1983); *Walker v. Iowa Dept. of Job Service*, 351 N.W.2d 802 (Iowa 1984); 486 IAC 3.3(6).

In addition back in April of this year, we have affirmed the regular benefit overpayment in case 22B-UI-24255 and so it is too late to address whether the Claimant was overpaid. Also we *already* waived the \$4800 in FPUC in case 22B UI-24257.

The issue here isn't whether the Claimant should have gotten benefits (that issue was resolved 19 months ago), nor whether the Claimant owes an overpayment of regular benefits (that issue was resolved 7 months ago). What remains is the possible waiver of the first week of state benefits. In fact, the case at hand concerns what happened following our remand in case 22B-UI-24257. In that matter we wrote:

Secondly, although the Claimant requests a waiver of her first week of the overpayment of regular state benefits, the basis for doing so is different than with federal benefits like FPUC, PEUC, and PUA. ...[T]his waiver is alleged to be a waiver of state benefits empowered by a federally-authorized agreement executed by Iowa Workforce. Under these circumstances, in our discretion, we deem that the issue should be addressed by Iowa Workforce. We note that by affirming the fact that there is an overpayment for the first week is not meant to preclude Iowa Workforce from considering the issue of waiver of that one week. For example, we have waived the FPUC in the companion case, but only after affirming that there was an overpayment. This is because only if there is an overpayment can repayment of the overpayment be waived.

We refer the question of waiver of repayment of the first week of the regular benefit overpayment to Iowa Workforce Development, Benefits Bureau to address in the first instance.

In Re Hand, 22B UI-24257 (EAB 2022). In the proceedings after referral this didn't really happen. Iowa Workforce did not explicitly address the putative agreement.

As Claimant points out, §2105 of the CARES Act address temporary full federal funding of the first week of compensable regular unemployment for states, like Iowa, with no waiting week. That section provides for reimbursement of states for the first week of benefits paid, if they enter into an agreement with the federal government. Subsection 2105(f) states that "[t]he provisions of section 2107(e) shall apply with respect to compensation paid under an agreement under this section to the same extent and in the same manner as in the case of pandemic emergency unemployment compensation under such section." As we have noted often before §2107(e)(2) states the State may waive PEUC 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." The question on remand was to be whether Iowa indeed entered into a contract for federal funding of the first week of benefits during the week in question in this case. Instead the Benefits Bureau merely wrote "regular unemployment benefits are not able to be waived." This is the general rule in Iowa, and the existence of

the federal contract for temporary funding of the first week of benefits is not addressed. Similarly, the Administrative Law Judge ruled that “Iowa law states that the Department shall recover the benefits. The Department does not have the authority to waive the benefits.” Whether the Department has that authority where it agrees to 100% federal funding of the weeks in question is the issue. *See* Iowa Code §96.11(10)(a).

We could remand this matter with directions to make IWD a party, so that we could see more information from the best source. Given the age of the case, and the fact of a previous remand, we will rule on the record as is. The Claimant has presented a *prima facie* case that waiver is authorized, and we therefore waive the first week of benefits, in the amount of \$161 on the same grounds that we previously waived the FPUC. We emphasize that our ruling is unique to this case given its procedural history, especially the fact of our prior remand. We are *not* ruling at this time that all first week overpayment dating to the period of the Cares act are eligible for waiver consideration. We make that ruling here because the agency had its chance in this case, and yet we saw no evidence addressing the Claimant’s exhibits. Unrebutted the exhibits cause us to reach our conclusion *in this case* that the first week is waivable.

Finally, we note for the edification of the Claimant that “[a] finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of the department, administrative law judge, or the employment appeal board, is binding only upon the parties to proceedings brought under this chapter, and is not binding upon any other proceedings or action involving the same facts brought by the same or related parties before the division of labor services, division of workers’ compensation, other state agency, arbitrator, court, or judge of this state or the United States.” Iowa Code §96.6(4). This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have **no effect** otherwise. *See also* Iowa Code §96.11(6)(b)(3)(“Information obtained from an employing unit or individual in the course of administering this chapter and an initial determination made by a representative of the department under section 96.6, subsection 2, as to benefit rights of an individual shall not be used in any action or proceeding, except in a contested case proceeding or judicial review under chapter 17A...). Indeed, our ruling is unique to the state of the record in this case.

DECISION:

The administrative law judge’s decision dated September 12, 2022 is **REVERSED**. The Employment Appeal Board concludes that the claimant was not overpaid \$161 for the first week of benefits. Accordingly, we reverse the overpayment for that single week.

James M. Strohman

Ashley R. Koopmans

DISSENTING OPINION OF MYRON R. LINN:

I respectfully dissent from the majority decision of the Employment Appeal Board. I do not address the waivability of the first week. This is because regardless I do not find this Claimant has met the requisite criteria to waive the first week.

RRA/fnv

Myron R. Linn