

**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-11371

**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: 96.3-7 116-136

DECISION

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**:

The Board modifies the Findings of Fact to add the following.

We set out the payments to the Claimant. Note that the weekly PUA benefit is calculated slightly differently than regular benefits since, by statute, the weekly PUA benefit is calculated using a different base period, namely, calendar year 2019. Here the regular benefit WBA was \$318, but the PUA calculated to \$294 because the high quarter in the regular base period is not in calendar year 2019. The specified amount was paid in PUA. Also note that by statute 2020 FPUC is not payable for benefit weeks ending before March 29, 2020, nor after BWE July 25, 2020. The 2021 FPUC (which is in the lower amount of \$300 a week) is first payable in BWE 1/2/2021. In the following chart "week paid" means the week of unemployment the payment is to cover, and the date following the listed amounts is the date the money was actually transferred to the Claimant:

Week Paid (BWE)	Reg/PEUC Amt/Date	PUA Amt/Date	FPUC/LWA (Reg) Amt/Date	FPUC/LWA (PUA) Amt/Date
03/28/20	318 on 3-30-20	294 on 4/5/21	N/A	N/A
04/04/20	318 on 4-06-20	294 on 4/5/21	600 on 4-29-20	600 on 4-05-21
04-11-20	318 on 4-13-20	294 on 4/5/21	600 on 4-14-20	600 on 4-05-21
04-18-20	318 on 4-20-20	294 on 4/5/21	600 on 4-21-20	600 on 4-05-21
04-25-20	318 on 4-27-20	294 on 4/5/21	600 on 4-28-20	600 on 4-05-21
05-02-20	318 on 5-04-20	294 on 4/5/21	600 on 5-05-20	600 on 4-05-21
05-09-20	318 on 5-11-20	294 on 4/5/21	600 on 5-12-20	600 on 4-05-21
05-16-20	318 on 5-19-20	294 on 4/5/21	600 on 5-20-20	600 on 4-05-21
05-23-20	318 on 5-26-20	294 on 4/5/21	600 on 5-27-20	600 on 4-05-21
05-30-20	318 on 6-01-20	294 on 4/5/21	600 on 6-02-20	600 on 4-05-21
06-06-20	318 on 6-08-20	294 on 4/5/21	600 on 6-09-20	600 on 4-05-21
06-13-20	318 on 6-15-20	294 on 4/5/21	600 on 6-16-20	600 on 4-05-21
06-20-20	318 on 6-22-20	294 on 4/5/21	600 on 6-23-20	600 on 4-05-21
06-27-20	318 on 6-29-20	294 on 4/5/21	600 on 6-30-20	600 on 4-05-21
07-04-20	318 on 7-06-20	294 on 4/5/21	600 on 7-07-20	600 on 4-05-21
07-11-20	318 on 7-13-20	294 on 4/5/21	600 on 7-14-20	600 on 4-05-21
07-18-20	318 on 7-20-20	294 on 4/5/21	600 on 7-21-20	600 on 4-05-21
07-25-20	318 on 7-27-20	294 on 4/5/21	600 on 7-28-20	600 on 4-05-21
			LWA Starts	
08-01-20	318 on 8-03-20	294 on 4/5/21	300 on 9-04-20	
08-08-20	318 on 8-10-20	294 on 4/5/21	300 on 9-04-20	
08-15-20	318 on 8-17-20	294 on 4/5/21	300 on 9-04-20	
08-22-20	318 on 8-24-20	294 on 4/5/21	300 on 9-04-20	
08-29-20	123.63 8-31-20	294 on 4/5/21	300 on 9-04-20	
	PEUC Starts			
09-05-20	318 on 9-08-20	294 on 4/5/21	300 on 9-09-20	
09-12-20	318 on 9-14-20	294 on 4/5/21		
9/19/2020		294 @ 12-23-20		
9/26/2020		294 @ 12-23-20		
10/3/2020		294 @ 12-23-20		
10/10/2020		294 @ 12-23-20		
10/17/2020		294 @ 12-23-20		
10/24/2020		294 @ 12-23-20		
10/31/2020		294 @ 12-23-20		
11/7/2020		294 @ 12-23-20		
11/14/2020		294 @ 12-23-20		
11/21/2020		294 @ 12-23-20		
11/28/2020		294 @ 12-23-20		
12/5/2020		294 @ 12-23-20		
12/12/2020		294 @ 12-23-20		
12/19/2020		294 @ 12-23-20		
12/26/2020		294 @ 12-22-20		
1/2/2021		294 @ 02-15-21		300 on 2-15-21
1/9/2021		294 @ 02-15-21		300 on 2-15-21
1/16/2021		294 @ 02-15-21		300 on 2-15-21
1/23/2021		294 @ 02-15-21		300 on 2-15-21
1/30/2021		294 @ 02-15-21		300 on 2-15-21
2/6/2021		294 @ 02-15-21		300 on 2-15-21
2/13/2021		294 @ 02-16-21		300 on 2-16-21
2/20/2021		294 @ 02-23-21		300 on 2-23-21
2/27/2021		294 @ 03-02-21		300 on 3-02-21
3/6/2021		294 @ 03-10-21		300 on 3-10-21
3/13/2021		294 @ 03-16-21		300 on 3-16-21
3/20/2021		294 @ 03-23-21		300 on 3-23-21
Total	\$7,119.63 Reg. \$ 636.00 PEUC	\$15,288 PUA [\$3,675 as offset]	\$10,200 FPUC \$ 1,800 LWA	\$10,200 FPUC*20 \$ 3,600 FPUC*21 \$ 0 LWA

The Board adds the following discussion to the **Reasoning and Conclusions of Law**:

First of all the Claimant was disqualified for regular benefits in a final decision issued by this Board in cases 20B-UI-11926 and 20B-UI-1197 in February of 2021. It is too late to challenge these rulings. *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).

Second, the Claimant has been approved for PUA, and been paid PUA. PUA is payable for the same weeks as regular benefits and monies like FPUC and lost wages assistance are payable on PUA on exactly the same basis and regular benefits. If the Claimant were eligible for regular benefits, he would by that very fact be ineligible for PUA. These two benefits never overlap. This why the Department of Labor requires that “[i]n processing claims for PUA, states must verify that individuals have no regular UI entitlement [and if] the individual’s eligibility for regular UI is questionable ... then the state must first require the individual to file a regular UI initial claim. If the individual is subsequently disqualified, then the state may consider the individual for PUA eligibility.” *UIPL 16-20, Attachment 1*, p. I-9 (April 5, 2020). The PUA statute specifically states that the very first requirement for getting PUA is that the person “is not eligible for regular compensation.” CARES Act Section 2102(a)(3)(A)(i); *UIPL 16-20, Attachment 1*, p. I-2 (“Covered Individual” means an individual who is not eligible for regular compensation or extended benefits under State or Federal law...”). The whole point of PUA was that people who were not able to get regular benefits, like gig workers and people who are unavailable to work because they are self-quarantining, *can* get PUA. But people who are laid off and who are eligible for regular benefits don’t need PUA, and so are not eligible for it. The law is very clear: You can’t get both.

Third, although the Claimant requests a waiver of the overpayment of regular state benefits, we have no legal basis for doing so. Back in the 1970’s things were briefly different. But a lot of water has gone under the bridge in the decades since.

In *Galvin v. Iowa Beef Proc.*, 261 N.W.2d 701 (1978) the Iowa Court cast doubt on anyone having to pay back benefits received in good faith while an appeal was pending. Shortly after *Galvin* the legislature made express that overpayments are to be recovered “unless the recovery would be contrary to equity or good conscience.” 67 G.A. ch. 1059, §3. According to the Iowa Supreme Court this amendment was “enacted in response to *Galvin*” and “might well” alter *Galvin* even with excusing only good faith overpayments. *Hiserote Homes, Inc. v. Riedemann*, 277 N.W.2d 911, 915 (Iowa 1979). But the statutory good faith exception prevailed for but a single year. In 1979 the good faith provision was struck and the first unnumbered paragraph (now letter “a”) made to read simply that “the benefits shall be recovered.” Iowa Code §96.3(7)(2021) *as amended* by 68 G.A. ch 33, §§1-5. What the legislature did over 40 years ago was strike “unless the recovery would be contrary to equity or good conscience.” The provision now reads:

- a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, **even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered.**

Iowa Code §96.3(7)(a)(2021). *Galvin* has been statutorily reversed for many years. As more recently explained by the Iowa Court of Appeals, “[t]his provision **requires** repayment notwithstanding [a Claimant]’s lack of fault in incurring the overpayment.” *Powell v. Employment Appeal Bd.*, 861 NW 2d 279, 281 (Iowa 2014) (emphasis added).

Thus in *Sievertsen v. Employment Appeal Board*, 483 N.W.2d 818 (Iowa 1992) a claimant needed to satisfy the \$250 earnings requirement to be eligible for benefits in a second benefit year. “Claimant endeavored to obtain the required \$250 in covered wages through employment at Marycrest College as a carpenter. At the time, he was a full-time student at Marycrest. The record reflects that claimant specifically asked DES representatives whether this employment would serve to qualify him for continued unemployment eligibility and was given the assurance that it would.” *Sievertsen* at 819. After Mr. Sievertsen had collected benefits with the imprimatur of the agency the agency realized it had made an error of law. Then Mr. Sievertsen was then socked with an overpayment. The Supreme Court concluded that, despite the error a by the agency and the fact that the claimant had been pre-approved to apply for benefits, there was no basis for preventing recovery of the overpayment. The Court specifically rejected the notion that the agency could be estopped. The Court cited to Iowa Code §96.3(7), and found “[w]e believe that the authorities cited preclude a finding that the Department of Employment Services is estopped from recouping the payments made to the claimant for which he was ineligible under the controlling regulations.” *Sievertsen* at 819.

In *Bailey v. Employment Appeal Board*, 518 N.W.2d 369 (Iowa 1994) the Court was confronted with Public Law 102-64 (1991), the Emergency Unemployment Compensation Act of 1991. That federal emergency benefits law had a repayment provision allowing the states to waive overpayment of emergency benefits if they wished (it was identical to the ones now in force for the federal benefits of PUA, PEUC, FPUC, and LWA). The Iowa Supreme Court pointed out that “while the federal statute quoted above provides that a state may waive repayment, Iowa has elected not to do so.” *Bailey*, 518 N.W.2d at 370. The Court noted that “the only discretion on the part of the agency is to give the recipient more repayment flexibility if the overpayment was made by error, as opposed to misrepresentation” but that “[i]n either case, the benefits must be repaid.” *Bailey* at 370. The presence of good faith, the availability of waiver of federal overpayments, and the lack of fraud simply are not enough to negate the fact that the Claimant must pay back his state benefit overpayment.

Fourth, we turn to the numbers in the chart.

The payment numbers are larger than actually transferred to the Claimant because 15% taxes were withheld. Withholding is the result of claimant election. In the following we give the gross numbers, disregarding withholding.

In 2020 for the 23 weeks ending August 29, 2020 the Claimant was paid \$7,119.63 in regular benefits, then for the two weeks ending September 12, 2020 he was paid \$636 in PEUC. Then in 2021 he was paid to cover the same 25 weeks \$7,350 in PUA benefits which is \$294 a week. Again the \$405.63 less in PUA is due to the lesser weekly benefit amount, offset somewhat by the fact that in the week ending August 29, 2020 the Claimant got paid out the balance of his regular benefits of \$123.63, but got paid for that week the full PUA benefit of \$294. In addition, in 2020 the Claimant received 17 weeks of FPUC at \$600, which is \$10,200. In 2021 the Claimant was paid a second round of FPUC benefits to cover these same seventeen weeks, for a second payment of \$10,200.

Outside the 25 weeks in question the Claimant has received an additional 27 weeks at \$294 a week, a total of \$7,938 in PUA. He also got 2021 FPUC, at \$300 a week, for 12 weeks, a total of \$3,600 in 2021 FPUC. None of this \$ 11,538 is overpaid.

All told the Claimant has gotten \$48,843.63 (about 230% of his base period earnings) in various benefits paid (less withholding), and he was only due \$30,888 (about 145% of his earnings in the base period). He owes back the difference of \$17,955.63 which breaks down as a \$7,119.63 regular overpayment, a \$10,200 FPUC overpayment, and a \$636 PEUC overpayment.

Yes, it would be nice that instead of double paying, and then asking for the second round of money back that IWD instead simply offset the overpayment. But PUA and regular benefits come from different benefit accounts, and federal law does not permit full offset of state overpayments using PUA benefits. So what IWD does when it has a regular benefit overpayment for a PUA-approved claimant is to offset regular benefits using, at most, half of the PUA and then pay out the other half. Then IWD would overpay the half of the regular benefits which had not already been offset. Sometimes, IWD pays **full** PUA benefits and overpays the entire round of regular benefits. So what the Claimant got was PUA **plus** regular benefits **plus two** rounds of FPUC. He is due only one round of FPUC, and *either* PUA or regular benefits, not both at the same time. He only got one round of LWA and is not overpaid that, and we deal with this issue elsewhere.

The bottom line is the Claimant was disqualified for *regular benefits*, that decision has been final for months, and the Claimant owes back the regular benefits he collected while he was ineligible. That he was due, **and has been paid** PUA, plus attendant FPUC benefits, **for the same period** provides him money to pay back the double payment but it doesn't wipe away the debt.

Finally, as the Administrative Law Judge stated that a portion of the overpayment has already been offset. The amount of the offset from PUA benefits goes to how much remains to be paid on the debt from the regular benefit/PEUC overpayment. In the case at bar we deal only with how much the starting debt was. Collection of overpayments are not within the jurisdiction of the Board. The Claimant is overpaid \$7,119.63 in regular benefits, and a portion of that has already been offset. How much has been offset is an issue for the Claimant and Iowa Workforce at this point. We point this out only so that the Claimant is aware of the issue. Also, the Claimant should note that since this is not a case of misrepresentation, remedies like a lien, or garnishment, are not available. 871 IAC 25.8(2)(b); Iowa Code §96.14(3). Again, the Board is not involved in collection issues, and it supplies these citations for information purposes only.

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Ashley R. Koopmans