

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

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**ALEXIS SHERADEN**

Claimant

and

**R C CASINO LLC**

Employer

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**HEARING NUMBER: 20B-UI-07956**

**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:** 96.4-3, 96.19-38

**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 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 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:**

The Claimant in this matter filed for benefits while still employed and receiving wages. Iowa Workforce issued a decision on April 16 informing her that she was not available for work because "you are still employed in your job." The Claimant was also told "if the circumstances have changed and you believe the disqualification can be removed, you should contact your local workforce development center...and request that it be removed." The Claimant was also given appeal rights. On May 19 the Claimant seemingly believed the disqualification could be removed based on changed circumstance. She contacted Workforce but in the form of an appeal. Of course, this appeal is late. The reality is the Claimant is not actually intending to appeal the determination that she was still employed back in March and April. She seems to understand that, and this is apparently why she stopped filing for benefits until May. What really seems to be happening is that the Claimant wants to inform Workforce that circumstances have changed, that she was no longer still employed back in May, and that her claim should be unlocked.

We find today that when taken as an appeal of decision Reference 01 of April 16 the Claimant's filing of May 19 is late. Thus, we affirm the finding that back in March she is not available because she was still employed. **This should not prevent Iowa Workforce from addressing her information that her circumstances have changed.**

Furthermore, since the Claimant has filed regular claims since May, if Iowa Workforce finds that her circumstances have in fact changed, and that the claim lock should be removed, then Iowa Workforce should remove the lock as of the date the Claimant proves the circumstances changed, or as of May 19, whichever is later. (This is because May 19 is when the Claimant first contacted Workforce about removing the lock). Of course, the Claimant must be otherwise eligible for benefits for the lock to be removed.

**DECISION:**

The decision of the Administrative Law Judge dated **August 26, 2020** is **AFFIRMED AS MODIFIED IN THE CLAIMANT'S FAVOR** but with **NO EFFECT ON THE EMPLOYER**.

**The overpayment of \$600.00 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 \$534.00 in state benefits at this time. Of course, if the referral to claims results in benefits being paid this would offset some or all of this overpayment. Our decision today does not alter the obligation to repay a state overpayment one way or the other. 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.

The Employment Appeal Board **REFERS this matter to Iowa Workforce, Benefits Bureau** to address, and to seek information from the Claimant concerning, whether the circumstances have changed such that the disqualification imposed by the April 16, 2020 Ref 01 decision can be removed. If Iowa Workforce does find that the disqualification of Claims decision *Ref 01* can be removed, and the Claimant is otherwise eligible for benefits, then the claim lock should be removed as of the date the circumstances changed, or as of May 19, whichever is later.

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Ashley R. Koopmans

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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, and in the referral to the Benefits Bureau.

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Myron R. Linn

RRA/fnv