

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

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**KELLY S THOMA**

Claimant

and

**WALMART INC**

Employer

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**HEARING NUMBER: 20B-UI-05778**

**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, 96.19-38B**

**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 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 her 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 of \$3,600** should be waived.

The Claimant should note well that the Claimant is still overpaid for the \$1,662 in regular state benefits at this time.

The Employer should note that the Employer will not be charged for any waived FPUC, and of course, will not be charged for regular benefits at this time.

#### **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. 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:**

The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis. Examples may include:

An individual who has to quit his or her job as a direct result of COVID-19 because the individual has tested positive for the coronavirus or has been diagnosed with COVID-19 by a qualified medical professional, and continuing work activities, such as through telework, is not possible by virtue of such diagnosis or condition;

An individual who has to quit his or her job due to coming in direct contact with someone who has tested positive for the coronavirus or has been diagnosed by a medical professional as having COVID-19, and, on the advice of a qualified medical health professional is required to resign from his or her position in order to quarantine.

UIPL 16-20, Attachment 1, p. I-4  
([https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_16-20\\_Attachment\\_1.pdf](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 self-quarantine began. The upshot is that if Claimant can make the necessary PUA showing of a need for self-quarantine Claimant may very well be eligible for PUA for any week such a quarantine was or is in place, and so is well-advised to pursue this avenue of federal benefits through Iowa Workforce. **Our ruling today is no bar to PUA.**

Notably today we have made a decision that denies regular unemployment, but allows regular benefits once the Claimant offers to return to work, but is rejected. 871 IAC 24.22(2)(j)(1) ("If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits."). What this means is that if the Claimant can get PUA the Claimant would receive that benefit so long as the Claimant is unavailable because on a leave of absence for COVID reasons, and then receive regular state benefits if Claimant returns and offers services once that COVID leave ends but is not rehired. The Employer should note it can avoid charges by bringing the Claimant back to work at the end of the COVID leave.

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>

If the Claimant is denied PUA, then the Claimant will still not have to pay back the FPUC but will remain overpaid for state benefits, and will remain unable to collect state benefits until the conditions for receipt of state benefits have all been satisfied.

#### **DECISION:**

The decision of the Administrative Law Judge dated July 28, 2020 is **AFFIRMED AS MODIFIED IN THE CLAIMANT'S FAVOR** but with **NO EFFECT ON THE EMPLOYER.**

**The overpayment of \$3,600 in FPUC benefits is hereby waived, and the Claimant has no obligation to pay back those benefits.**

The Employer will not be charged as FPUC is a federally funded benefit. In all other respects the decision of the Administrative Law Judge is affirmed.

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Ashley R. Koopmans

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James M. Strohmman

**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.

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Myron R. Linn

RRA/fnv