

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

ABIGAIL J WELTER

Claimant

: **APPEAL NUMBER:** 22B-UI-12773

: **ALJ HEARING NUMBER:** 22A-UI-12773

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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, 116-136

DECISION

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, PEUC and LWA BENEFITS IS MODIFIED TO BE CONSISTENT WITH THE FOLLOWING DISCUSSION:

The Administrative Law Judge's discussion of the recovery of overpaid FPUC, PEUC and LWA 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

....

SEC. 2107. PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION.

(e)(2) Repayment. --In the case of individuals who have received amounts of pandemic emergency unemployment compensation under this section to which they were not entitled, the State shall require such individuals to repay the amounts of such 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 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.

PL116-136, Sec. 2104(f)(2); 2107(e)(2). In addition, 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 allowed benefits and the Employer appealed. After the hearing, the Employer prevailed. 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 and LWA benefits in addition to PEUC benefits. We now consider whether the FPUC, LWA, and PEUC overpayments can be waived.

The Employer should note that the Employer will not be charged for any waived FPUC, PEUC or LWA.

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 has already been found not to have committed fraud or misrepresentation, we find on this individualized basis that the **FPUC, PEUC and LWA overpayments** should be waived. In the circumstances of this case we find the Claimant satisfies the no fault, equity, and good conscience criteria.

If after today the Claimant should receive an overpayment decision concerning the overpayment(s) we have waived then the Claimant should appeal that decision. The Claimant should retain our decision to present to IWD in response to any such decision. The Claimant likewise should present this order to IWD if the Claimant should receive a bill for the waived overpayments.

**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, or who lost work as a direct result of the Pandemic. The federal Department of Labor has instructed that **eligible persons would include**:

- a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis. ...
- b) A member of the individual's household has been diagnosed with COVID-19. ...

- c) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19. ...
- d) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work....
- e) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency. ...
- f) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. ...
- g) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency. ...
- h) The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19. ...
- i) The individual has to quit his or her job as a direct result of COVID-19. ...
- j) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency. ...
- k) The individual meets any additional criteria established by the Secretary for unemployment assistance under this section....

UIPL 16-20, Attachment 1

(https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Attachment_1.pdf)

Our ruling today is no bar to PUA. Our ruling on the quit would mean if the Claimant can get PUA then once the Claimant comes off PUA the Claimant would have to requalify by earning 10 times the weekly benefit amount before Claimant could receive state unemployment benefits.

Notably today we have made a decision that denies regular unemployment, but allows regular benefits once the Claimant is fully released, offers the Claimant's services to the Employer, but is rejected. Iowa Code §96.5(1)(d). Of course, the Claimant could also requalify for state benefits by earning 10 times the weekly benefit amount since the date of the quit. This means if the Claimant can get PUA the Claimant would receive the PUA benefit so long as the Claimant is away from work for COVID reasons, and then receive regular state benefits if Claimant is fully released to do the old job at the Employer, returns and offers services to the Employer but is not rehired, or if Claimant otherwise requalifies. (But for PUA claims filed after December 26, 2020 those benefits may not be paid for any week prior to December 1, 2020.) The Employer should note it can avoid charges by bringing the Claimant back to work at that time.

Should the Claimant wish to apply for PUA, the information on how to do so is found at: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals>

DECISION:

The decision of the Administrative Law Judge dated September 16, 2022 is **AFFIRMED AS MODIFIED IN THE CLAIMANT'S FAVOR** but with **NO EFFECT ON THE EMPLOYER**.

The overpayment of \$11,400 in FPUC, \$3,689 in PEUC, and \$1,800 in LWA is hereby waived. As a result of today's decision, the Claimant has no obligation to repay any of the Claimant's overpayments. These waivers are effective only if the Claimant does not receive payments of either state benefits (from any state) or PUA or a second payment of any of the federal pandemic benefits covering the same weeks. If the Claimant does receive such additional payments covering the same period of time as this case, then Claimant will not be allowed to retain the double payment. In all other respects, the decision of the Administrative Law Judge is affirmed.

James M. Strohman

Ashley R. Koopmans

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.

Myron R. Linn

AMG/fnv