

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

MICHAEL J ORR
Claimant

APPEAL NO. 22A-UI-09198-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/29/20
Claimant: Appellant (1R)**

Section 96.3-7 – Recovery of Overpayment of Benefits
PL 116-136 Sec. 2107 – Pandemic Emergency Unemployment Compensation (PEUC)
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)
Section 96.3-7 – Recovery of Overpayment of Benefits (LWAP)

STATEMENT OF THE CASE:

Claimant appealed a representative's decision dated April 7, 2022, reference 04, that concluded claimant was overpaid Pandemic Emergency Unemployment Compensation (PEUC), Federal Pandemic Unemployment Compensation (FPUC), and Lost Wage Assistance (LWAP) as a result of a disqualification decision. A hearing was scheduled and held on May 25, 2022 pursuant to due notice. Claimant did participate. The administrative law judge took official notice of the administrative record.

ISSUES:

The issues are whether claimant is overpaid Pandemic Emergency Unemployment Compensation (PEUC), whether claimant is overpaid Federal Pandemic Unemployment Compensation (FPUC), and whether claimant is overpaid Lost Wage Assistance Program Benefits (LWAP)?

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The overpayment of Pandemic Emergency Unemployment Compensation (PEUC) benefits issue in this case was created by a disqualification decision that has now been affirmed. Claimant is overpaid \$1,057.00 for the seven weeks ending June 20, 2020.

The administrative law judge, having considered all of the evidence in the record, finds that: The Federal Pandemic Unemployment Compensation (FPUC) overpayment issue in this case was created by a disqualification decision that has now been affirmed. Claimant is overpaid \$10,200.00 for the 17 weeks ending July 25, 2020.

The administrative law judge, having considered all of the evidence in the record, finds that: The LWAP overpayment issue in this case was created by a disqualification decision that has now been affirmed. Claimant is overpaid \$600.00 for the two weeks ending August 8, 2020.

The claimant is currently approved for Pandemic Unemployment Assistance (PUA). Whether the PUA benefits should be used to offset the overpayment benefits has not yet been reviewed by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.3(7)*a, b*, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

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. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

PL 116-136 Sec 2107 provides in pertinent part:

PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION.

(2) PROVISIONS OF AGREEMENT. —

Any agreement under paragraph (1) shall provide that the State agency of the State will make payments of pandemic emergency unemployment compensation to individuals who—

(A) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before July 1, 2019);

(B) have no rights to regular compensation with respect to a week under such law **or any other State unemployment compensation law** or to compensation under any other Federal law;

(C) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

(D) are able to work, available to work, and actively seeking work.

(emphasis added).

On March 27, 2020, President Trump signed the CARES Act, which included the Relief for Workers Affected by Coronavirus Act set out in Title II, Subtitle A. Section 2104 of the CARES Act created the FPUC program, which was a new temporary federal supplemental payment. On December 27, 2020, President Trump signed into law the Consolidated Appropriations Act, 2021, which includes Division N, Title II, Subtitle A, the Continued Assistance Act. Section 203 reauthorizes the FPUC program for weeks of unemployment beginning after December 26, 2020 and ending on or before March 14, 2021 but modifies the weekly supplement amount to \$300.00.

PL 116-136, Sec. 2104 (15 U.S.C. 9023) provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment. -- 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...

Section 203 of the Continued Assistance for Unemployed Workers Act of 2020 provides in pertinent part as follows:

(a) IN GENERAL. – Section 2104(e) of the CARES Act (15 U.S.C. 9023(e)) is amended to read as follows:

“(e) APPLICABILITY. – An agreement entered into under this section shall apply –

(1) to weeks of unemployment beginning after the date on which such agreement is entered into and ending on or before July 31, 2020; and

(2) to weeks of unemployment beginning after December 26, 2020 (or, if later, the date on which such agreement is entered into), and ending on or before March 14, 2021.”.

(b) AMOUNT.-

(1) IN GENERAL. – Section 2104(b) of the CARES Act (15 U.S.C. 9023(b)) is amended –

(A) in paragraph (1)(B), by striking “of \$600” and inserting “equal to the amount specified in paragraph (3)”; and

(B) by adding at the end of the following new paragraph:

“(3) AMOUNT OF FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION.-

“(A) IN GENERAL. – The amount specified in this paragraph is the following amount:

“(i) For weeks of unemployment beginning after the date on which an agreement is entered into under this section and ending on or before July 31, 2020, \$600.

“(ii) For weeks of unemployment beginning after December 26, 2020 (or, if later, the date on which such agreement is entered into), and ending on or before March 14, 2021, \$300.”.

The administrative law judge concludes that claimant is overpaid Pandemic Emergency Unemployment Compensation (PEUC) in the amount of \$1,057.00 for the seven weeks ending August 8, 2020, pursuant to Iowa Code section 96.3-7, and PL 116-136 – Federal Pandemic Emergency Unemployment Compensation as the disqualification decision that created the overpayment decision has now been affirmed.

The administrative law judge concludes that claimant is overpaid Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$10,200.00 for the 17 weeks ending July 25, 2020, pursuant to Iowa Code section 96.3-7 and PL116-136, Sec. 2104 as the disqualification decision that created the overpayment decision has now been affirmed.

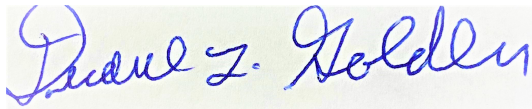
The administrative law judge concludes that claimant is overpaid Lost Wage Assistance Program Benefits (LWAP) in the amount of \$600.00 for the two weeks ending August 8, 2020, pursuant to Iowa Code section 96.3-7 as the disqualification decision that created the overpayment decision has now been affirmed.

DECISION:

The decision of the representative dated April 7, 2022, reference 04, is affirmed. Claimant is overpaid Pandemic Emergency Unemployment Compensation (PEUC) in the amount of \$1,057.00. Claimant is overpaid Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$10,200.00. Claimant is overpaid of Lost Wage Assistance Program Benefits in the amount of \$600.00.

REMAND:

The issue of whether the claimant's overpayment of benefits should be recovered from his PUA benefits is remanded to the Benefits Bureau for review.



Duane L. Golden
Administrative Law Judge

July 29, 2022
Decision Dated and Mailed

dlg/kmj

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.