

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

JOSEPH BENTLEY
Claimant

APPEAL 23A-UI-04984-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 05/10/20
Claimant: Appellant (1)

Iowa Code § 96.3(7) – Recovery of Overpayment of Benefits
PL 116-136 Section 2104 – Federal Pandemic Unemployment Compensation (FPUC)
Fed Law PL § 116-136 9021(D)(4) – Lost Wages Assistance Program Waiver of Repayment
Fed Law PL 116-136, Sec. 2107(E) 4 – Pandemic Emergency Unemployment Compensation
Iowa Code § 96.3(7) – LWAP Benefits

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the May 5, 2023 (reference 06) unemployment insurance decision that found claimant's request for waiver of FPUC overpayment was denied. The claimant was properly notified of the hearing. A telephone hearing was held on May 30, 2023. The claimant participated personally. The administrative law judge took official notice of the claimant's administrative records.

ISSUE:

Should the claimant's PEUC, LWAP, and / or PEUC overpayment be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an original claim for regular unemployment insurance benefits funded by the State of Iowa effective May 10, 2020. The claimant was paid FPUC benefits for the weeks between May 10, 2020 and May 1, 2021 for a total amount of \$8,400.00 as a supplement to their eligibility for regular unemployment insurance benefits. Additionally, the claimant received \$1,494.00 in PEUC benefits for the weeks between September 26, 2020 and May 1, 2021. Claimant was later found to have been overpaid \$1,335.00 of that amount, and \$1,800.00 in LWAP benefits for the weeks between July 25, 2020 and September 5, 2020.

In a decision dated March 20, 2023 (reference 02), it was determined that the claimant was not eligible for regular benefits. Claimant was then determined to be overpaid FPUC benefits in the amount of \$8,400.00 for the weeks between May 10, 2020 and May 1, 2021, overpaid PEUC benefits in the amount of \$1,335.00 for the weeks between September 20, 2020 and May 1, 2021, and overpaid LWAP benefits in the amount of \$1,800.00 for the weeks between July 25, 2020 and September 5, 2020. Claimant filed an application for waiver of the overpayment of benefits.

FPUC benefits were initially paid to the claimant because no initial determination finding the claimant was not eligible had been made at that time. It was only once the investigations bureau discovered that claimant entirely omitted all wages earned from Allen Memorial Hospital in each of his weekly reports that claimant's overpayments were discovered.

IWD initiated fraud findings against the claimant for each of the various overpayments received. On April 14, 2023 Judge Duane Golden found the claimant to have been overpaid benefits in each of the aforesaid matters, but the judge did not find fraudulent actions on the part of the claimant.

Claimant stated that the wording of the instructions led to his ongoing lack of reporting of his income from the job he continued working when he was laid off from a second job he held. Claimant further stated that the confusion in the wording of the instructions has since been changed.

The claimant used the money received – including the federal supplemental benefits - during the periods he filed to pay for necessary living expenses, including, food, shelter and clothing.

The claimant's current income is at or around \$54,000.00.

Claimant has no other dependents they care for.

Claimant's monthly expenses typically do not exceed their monthly income.

Claimant has other savings at or around \$8,455.00 for which to repay the overpayment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

PL 116-136 Section 2107 of the CARES Act created a program in which an individual who had maxxed out ordinary or PUA benefits would be able to continue to receive federal unemployment benefits.

On May 11, 2021, Governor Reynolds announced that Iowa would end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for FPUC benefits in Iowa was the week ending June 12, 2021. The CARES Act provides that a State agency may waive repayment of an overpayment in certain circumstances.

PL 116-136, Sec. 2104(f)2 provides:

EMERGENCY INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

(f) Fraud and Overpayments. –

(1) In general. – If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material facts, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of Federal Pandemic Unemployment Compensation to which such individual was not entitled, such individual –

(A) Shall be ineligible for further Federal Pandemic Unemployment Compensation in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

- (B) Shall be subject to prosecution under section 1001 of title 18, United States Code.
- (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 amount 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.

PL 116-136, SEC. 2107. Pandemic Emergency Unemployment Benefits.

E. Fraud and Overpayments

- 2. Overpayments. A PEUC overpayment occurs when an individual has received a PEUC payment to which he or she is not entitled.
- 3. Opportunity for a Hearing. Under 2107(e)(3)(B) of the CARES Act, a State may not require repayment of a PEUC overpayment until it determines that the payment was an overpayment, the individual was provided notice of the determination, the individual had an opportunity for a fair hearing, and the determination is final.
- 4. Waiver of Overpayments. The State has authority to waive repayments of PEUC if the payment was without fault on the part of the individual and such repayment would be contrary to equity and good conscience.

Federal Law PL 116-136 Section 9021 of the CARES Act created a program in which an additional \$300.00 per week was payable to claimants who were eligible for at least \$1.00 per week in benefits stemming from other programs including regular unemployment insurance funded by the State of Iowa, Pandemic Emergency Unemployment Compensation, Pandemic Unemployment Assistance, Iowa Extended benefits, and Trade Act benefits. This program ran from July 26, 2020 through September 5, 2020. Claimants were only eligible to receive LWAP payments if they were entitled to receive benefits from another applicable program. The payments of LWAP benefits were automatic so long as a claimant was determined to be eligible under one of the other applicable programs.

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. 9021(d)4 provides:

LOST WAGES ASSISTANCE PROGRAM BENEFITS.

(4)WAIVER AUTHORITY In the case of individuals who have received amounts of pandemic unemployment assistance to which they were not entitled, the [State](#) shall require such individuals to repay the amounts of such pandemic unemployment assistance to the [State](#) agency, except that the [State](#) agency may waive such repayment if it determines that—

(A) the payment of such pandemic unemployment assistance was without fault on the part of any such individual; and

(B) such repayment would be contrary to equity and good conscience.

In determining whether the payment of FPUC benefits was without fault on the part of the claimant, several factors must be considered. Those factors include whether a material statement or representation was made by the claimant in connection with the application for benefits and whether the claimant knew or should have known that the statement was inaccurate; whether the claimant failed or caused another to fail to disclose a material fact in connection with the application for benefits that resulted in the overpayment and whether the claimant knew or should have known that the fact was material; whether the claimant knew or could have been expected to know that they were not entitled to the compensation payment; and whether the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the claimant or of which the claimant had knowledge and which was erroneous or inaccurate or otherwise wrong. *Cf.* Iowa Admin. Code r. 871-24.50(7)(factors for waiver of temporary extended unemployment compensation). In the instant matter, the overpayments of each of the federal monies occurs as a direct result of the claimant not reporting his total income. Claimant did not reach out to IWD to find out the correct way to file for benefits and continued filing every week, reporting he'd earned no income when in fact he'd earned income that would disqualify him from regular and supplemental income. This was claimant's fault that he received money when he otherwise would not have received the benefits if weekly earnings were properly reported.

In deciding whether repayment would be contrary to equity and good conscience, several factors must be considered. Those factors include whether repayment would cause financial hardship to the claimant; or, that the claimant (regardless of financial circumstances) can establish that they have relinquished a valuable right or changed positions for the worse; or, recovery would be unconscionable under the circumstances. See UIPL No. 20-21(4)d. Other factors include whether the overpayment was the result of a decision on appeal; whether the state agency had given notice to the claimant that they may be required to repay the overpayment in the event of a reversal of the eligibility determination on appeal; and whether recovery of the overpayment will cause financial hardship to the claimant. Cf. Iowa Admin. Code r. 871-24.50(7)(factors for waiver of temporary extended unemployment compensation). Here, asking claimant to repay is not against equity or good conscience. To rule otherwise would allow any and all claimant's to state that they did not mean to make statements that allowed them benefits that they would have otherwise been disqualified from receiving.

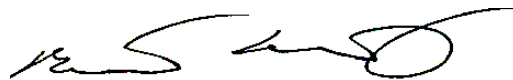
The claimant was initially paid FPUC benefits due to their initial eligibility for regular unemployment insurance benefits; however, the claimant was later determined to be ineligible for those benefits. The claimant made material misstatements when filing for benefits. As such, the payment of FPUC, PEUC and LWAP benefits occurred as a direct result of fault on the part of the claimant in stating his weekly income.

The administrative law judge does note that claimant has over \$8,455.00 in savings, and income at or around \$54,000.00 a year. The administrative law judge does not need to address the repayment as a result of claimant's income level as he is otherwise ineligible to receive said benefits as a result of his errors.

As such, the claimant's overpayment amount of \$8,400.00 in FPUC benefits, \$1,335.00 in PEUC benefits, and \$1,800.00 in LWAP benefits shall not be waived.

DECISION:

The May 5, 2023 (reference 06) unemployment insurance decision is affirmed. The claimant's overpayment of FPUC benefits in the amount of \$8,400.00, PEUC benefits in the amount of \$1,335.00, and LWAP benefits in the amount of \$1,800.00 are not waived.



Blair Bennett | Administrative Law Judge II
Iowa Department of Inspections & Appeals

May 31, 2023
Decision Dated and Mailed

bab/mh

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. *There is no filing fee to file an appeal with the Employment Appeal Board.*

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 file a petition for judicial review in district court.

2. If you do not file 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 www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

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. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

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 no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

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.