

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

AMY E RYSDAM

Claimant

and

IWD INTEGRITY BUREAU

: **APPEAL NUMBER:** 23B-UI-08140

: **ALJ HEARING NUMBER:** 23A-UI-08140

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: **EMPLOYMENT APPEAL BOARD**

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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 96.5-8

DECISION

The Agency appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Amy Rysdam filed her initial UI claim on Thursday, April 2, 2020. Amy Rysdam entered her name, Amy E. Booth, her email address as amyerin22@yahoo.com, and her username as amyerin22. IWD set the effective date of her claim as March 29, 2020, the Sunday of the week she filed her claim. IWD set her weekly UI benefit amount at \$167.00.

When Amy Rysdam established her UI claim, she checked the box saying she agreed to read the IWD UI Handbook, and she read the handbook. The handbook includes instructions for properly filing claims and informs claimants that failure to follow the instructions could result in a denial or overpayment of benefits. The handbook also informs claimants that they should call IWD customer service for help if they do not understand the information in the handbook.

The handbook provides in part:

Preparing to File a Weekly Claim

You should have the following information available when filing your weekly claim:

- SSN
- PIN
- Total amount of gross wages (before deductions) earned during the week
- Total amount of gross holiday pay, vacation and severance, if applicable

To file a weekly UI claim, a person must enter the claimant's full SSN and the claimant's personal identification number (PIN).

Amy Rysdam filed weekly UI claims for two weeks – March 29, 2020 through April 4, 2020 and April 5-11, 2020. Amy Rysdam reported earning \$1.00 the week of March 29, 2020 through April 4, 2020 and \$0.00 the week of April 5-11, 2020.

IWD did not pay Amy Rysdam UI benefits for either of the 2 weeks she filed UI claims. On April 10, 2020, IWD mailed Amy Rysdam a reference 02 UI decision. This decision denied Amy Rysdam REGULAR (state) UI benefits as of March 29, 2020, the beginning of her 2020 claim year, because she had filed a UI claim in 2019 but she had not earned enough in wages since filing her 2019 claim.

On April 6, 2020, a UI claim was filed in the name of Amy M. Booth, but with Freel Rysdam's Social Security Number (SSN) and date of birth. Also Freel's middle name was "Max" and the claim used his middle initial. (Ex. 14.) Freel Rysdam was Amy Rysdam's husband at the time. "Booth" was Amy Rysdam's last name before marriage. IWD did not catch this name/SSN/date of birth mismatch because IWD had loosened its security protocols due to the COVID-19 pandemic so IWD could process claims more quickly. Once a claimant selects tax withholding as an option that option cannot be changed online, but must be done by personal contact from the claimant.

The email address listed on this claim is amyerin22@gmail.com, and the username is listed as freelrysdam. On August 14, 2023 IWD issued an adverse decision in this matter, and on August 23, 2023 Amy Rysdam appealed. In this online 2023 appeal Amy Rysdam twice listed her email address as "amyerin22@gmail.com." The mailing address listed on the Amy Booth claim was the same as the mailing address initially listed on Amy Rysdam's claim. IWD set the effective date of this claim as April 5, 2020, the Sunday of the week this claim was filed. IWD set the weekly UI benefit amount on this claim at \$500.00.

The same day, April 6, 2020, Bank of America, (BOA), IWD's debit card vendor, mailed a debit card to Amy M. Booth at the address on UI claim with that name, which was also Amy Rysdam's address. Amy Rysdam admits she saw the BOA debit at some point. On April 14, 2020, Freel Rysdam went to the IWD local office, and IWD changed the name on his UI claim from Amy M. Booth to Freel Rysdam. Amy Rysdam went with her husband to this appointment.

Amy Rysdam filed weekly UI claims on Freel Rysdam's account for 21 weeks from May 10, 2020 through October 3, 2020, and reported earning \$0.00 each week for all 21 weeks. IWD paid out REGULAR (state) UI benefits in the total gross amount of \$500.00 each week for all 21 weeks to the BOA debit card issued to Amy M. Booth. For the week of May 10-16, 2020 only IWD withheld \$236.52 for child support. In fact, once state benefits had been exhausted this person continued to file weekly claims which requested payment of benefits in a continuous unbroken series of claims through May 11, 2021. IWD also paid out PEUC benefits in the total gross amount of \$500.00 each week for 13 weeks between October 4, 2020 and January 2, 2021 to the BOA debit card issued to Amy M. Booth, a total of \$6,500 in PEUC paid to the debit card. In addition, IWD paid FPUC at \$600 a week for the eleven weeks between May 10, 2020 and July 25, 2020, a total of \$6,600. IWD also paid \$300 to the BOA debit card for the week ending January 2, 2021. Also, IWD paid \$1,800 in Lost Wages Assistance, at \$300 a week, to the BOA debit card for each of the six weeks between July 26, 2020 and September 5, 2020.

IWD switched debit card vendors effective January 2, 2021 from BOA to U.S. Bank. That meant IWD no longer sent UI benefits to BOA debit cards but to U.S. Bank debit cards. On March 29, 2021, Amy Rysdam changed the phone number on Freel Rysdam's UI account. The change was from 641-680-4911 to 641-455-6627. Three days later, on April 1, 2021, Amy Rysdam logged into Freel Rysdam's UI account and changed the payment method from the IWD U.S. Bank debit card to a checking account at South Ottumwa Savings Bank ending in 3104. (Ex. 8.2). This change was effective as of March 28, 2021. The account in question belonged to Amy Rysdam, and was active at the time, as shown by routine transactions on that account in March and April of 2021. (Ex. 14). Also the account shows that *deposits* were made in the amount of \$900 on March 31, 2021 and in the amount of \$1000 on April 5, 2021. (Ex. 14). The IWD deposits totaled \$760 and were made on April 9, 2021. The balance forward on the account was \$907.06 from March 25, 2021.

In May 2021, the Iowa State Auditor (State Auditor) notified IWD that the Social Security Administration (SSA) had notified the State Auditor that Freel Rysdam had died on May 10, 2020. Since IWD had paid out UI benefits on Freel Rysdam's claim, Mr. Lysinger began an identity theft investigation. Mr. Lysinger confirmed Freel Rysdam's death via a specialized Lexis Nexis search and from an online obituary from the Reece Funeral Home in Ottumwa, Iowa. Mr. Lysinger reviewed Amy Rysdam and Freel Rysdam's UI claims. He noticed similarities between Amy Rysdam's UI claim and Freel Rysdam's UI claim: same initial mailing address, similar email addresses, and the name Amy M. Booth initially listed on Freel Rysdam's UI claim. He saw that someone had filed weekly UI claims on Freel Rysdam's claim for many weeks after Freel Rysdam's death. He also saw the April 1, 2021 change of payment method on Freel's UI claim. Mr. Lysinger concluded that Freel Rysdam's claim did not appear to have been hijacked.

On June 14, 2021, Mr. Lysinger called the number listed on Freel Rysdam's UI claim, 641-455-6627. Amy Rysdam answered, verified her identity, and stated that Freel Rysdam was her husband. Amy Rysdam confirmed that she had filed a UI claim in 2020, and told Mr. Lysinger that she had helped Freel Rysdam file a UI claim in 2020. Amy Rysdam also stated that she had filed about two weekly UI claims on Freel's claim after his death, and that she had moved about one month before Freel died. Amy Rysdam denied having had, or currently having, a debit card on which IWD paid UI benefits on Freel Rysdam's claim. Amy Rysdam ended the call because she felt that Mr. Lysinger was accusing her of UI fraud.

The day after the call, Mr. Lysinger reviewed the records more and saw the March 29, 2021 phone number change on Freel's UI claim. Mr. Lysinger again concluded that Freel Rysdam's claim did not appear to have been hijacked.

On August 18, 2022, IWD subpoenaed South Ottumwa Savings Bank records from March 28, 2021 through April 3, 2021 for the account where UI benefits for Freel Rysdam's UI claim was directed as of April 1, 2021. The records showed the account is a checking account that has been co-owned by Amy Rysdam and Freel Rysdam since December 1, 2017. Amy Rysdam had survivorship rights on the account. The records also showed two deposits of UI benefits from IWD, both on April 9, 2021 – one for \$285.00 and one for \$475.00. This represents payments, after tax withholding, of \$300 in FPUC and another \$500 in PEUC.

IWD also subpoenaed bank records from BOA for the BOA debit card issued in the name of Amy M. Booth. On July 20, 2023, BOA provided IWD with records showing that on July 10, 2023 it had searched for records for the Amy M. Booth BOA debit card for the time period July 5, 2020 through January 1, 2021. These records showed the BOA debit card was issued in the name of Amy M. Booth, and mailed to the address initially listed on both Amy Rysdam and Freel Rysdam's UI claims. The records also showed transactions from September 4, 2020 through January 1, 2021, including UI benefits deposited onto the debit card at various dates.

On August 3, 2023, Mr. Lysinger mailed Amy Rysdam a notice of audit. The notice informed Amy Rysdam that IWD potentially overpaid her UI benefits in the total gross amount of \$26,980.00 for 47 weeks between May 10, 2020 and April 3, 2021 because she filed weekly UI claims on a deceased person's UI claim. The notice also informed Amy Rysdam that IWD scheduled a telephone interview for August 10, 2023 at 9:00 a.m. to discuss the matter with her. The notice further informed Amy Rysdam that she may provide information to IWD about the matter, and if she did not participate in the interview IWD would issue a decision(s) using the information IWD already had, including potentially disqualifying her from the UI benefits IWD had already paid and future UI benefits. Finally, the notice informed Amy Rysdam that if IWD concluded that it had overpaid her, IWD may assess a 15 percent penalty to the overpayment, disqualify her from receiving future UI benefits and/or other consequences, as provided by Iowa law. In the same mailing, Mr. Lysinger also sent Amy Rysdam the BOA bank records, the South Ottumwa Savings Bank bank records, IWD information about her UI claim and IWD information about Freel Rysdam's UI claim. On August 7, 2023, Mr. Lysinger emailed Amy Rysdam the notice and the documents he had mailed to her.

Amy Rysdam told the investigator that she and her husband noticed that his claim was filed under the name Amy Booth and they went to the IWD local office to change the name on his UI claim. Amy Rysdam confirmed that she had an account at South Ottumwa Savings Bank, but claimed that the account was closed years ago. Amy Rysdam denied changing her husband's UI claim so that UI payment went to the South Ottumwa Savings Bank account, and she denied knowing who made the change. Amy Rysdam denied knowing where the BOA debit card is, and she denied accessing her husband's UI claim. As we explain below these denials of wrongdoing by Amy Rysdam are not credible.

The State has proven by a preponderance of the evidence that the person who filed the weekly claims on Freel Rysdam's social security number after he was dead was Amy Rysdam. In fact, although the standard of proof is merely more likely than not, we would find that the State has proven this by clear, convincing and satisfactory evidence.

REASONING AND CONCLUSIONS OF LAW:

Lost Wages Assistance was an extra \$300 a week provided for by an Executive Order issued by President Donald Trump. UIPL 27-20, p. 1 (DOL-ETA 8/12/2020). Inasmuch as the President has limited power to redirect federal unemployment funds, the LWA funds come from FEMA emergency money. For six weeks in the summer of 2020 an extra \$300 a week in “Lost Wages Assistance” was payable. *Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019* (Presidential Memo 08/08/2020) §4(d)(i)(C) (Lost Wages Assistance). To get the LWA boost a claimant had to collect some minimal amount of benefits of another type. The claimant must “receiv[e] for the week of unemployment with respect to which LWA is sought, at least \$100 of [another type of unemployment, disaster, or Pandemic benefit].” UIPL 27-20, (DOLETA August 12, 2020). So if an individual claimant got \$100 worth of benefits this was sufficient to support the \$300 LWA payment during those six weeks in summer of 2020.

Given our findings, and given the law we have set out we reverse the Administrative Law Judge and affirm the claims decision. The Claimant is overpaid \$1,800 in LWAP benefits paid from July 25, 2020 through September 5, 2020. Although we have found fraud regarding the underlying benefits paid, and thus are unable to waive this LWAP overpayment, no additional monetary penalty can be imposed on the LWAP overpayment.

We now explain our weighing of the evidence in this matter. It is the duty of the Board as the ultimate trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The Board, as the finder of fact, may believe all, part or none of any witness’s testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, as well as the weight to give other evidence, a Board member should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what evidence to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence the Board believes; whether a witness has made inconsistent statements; the witness’s conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). The Board also gives weight to the opinion of the Administrative Law Judge concerning credibility and weight of evidence, particularly where the hearing is in-person, although the Board is not bound by that opinion. Iowa Code §17A.10(3); *Iowa State Fairgrounds Security v. Iowa Civil Rights Commission*, 322 N.W.2d 293, 294 (Iowa 1982). We also note that the three Members of this Board each listens to the digital recording of this hearing and each has equal access to factors such as tone of voice, hesitancy in responding, etc. as the Administrative Law Judge. The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence considering the applicable factors listed above, and the Board’s collective common sense and experience. We have found credible the testimony from the Department’s personnel. We have also found the investigator’s notes to be credible and reliable records of what Amy Rysdam actually said when he spoke with her. We find Amy Rysdam incredible concerning everything except the most basic or uncontested facts. Her denials of any involvement in the claims at issue here are not believable and receive no weight from us.

As the Administrative Law Judge seemed to take Amy Rysdam's denials at face value, we will explain why they are so unbelievable in the view of both independent Board members. The clearest thing to do in a case like this is follow the money.

The record is clear that Amy Rysdam filed a subsequent benefit year claim under the name Amy Rysdam with a claim date of March 29, 2020. She was not paid on this claim because of a second benefit year disqualification (inadequate earnings). The phone number on this claim was 641-680-1864 the address was 1316 E Mary St. #45, and the email was amyerin22@yahoo.com. (Ex. 10; Ex. 12). After a couple weeks not being paid on this claim, another claim was filed with an original claim date of 4/5/2020. This one was filed under the name Amy Booth with the same E. Mary Street address, the phone number 641-680-4911, an email address of amyerin22@gmail.com, but Freel Rysdam's social security number and birthday. (Ex. 3; Ex. 9). On August 23, 2023 Amy Rysdam filed her appeal of the claims decision in this case she gave her email address as "amyerin22@gmail.com." (Online appeal in case 08137). The April 2020 claim had weekly claims filed, week in and week out, from the first week of that claim. The claim requested payment to a debit card that was mailed to the E. Mary Street address – the same one Amy Rysdam gave on the March 29 claim. Amy Rysdam admits seeing this card. So after Freel dies on May 10 who would bother to diligently file weekly claims but the person in possession of the debit card? The record contains only one such known person: Amy Rysdam.

Amy Rysdam seems to suggest that someone else somehow got possession of the debit card. There are several problems with this. We have three updates to the accounts in question. So whoever has the debit card also was able to log into the accounts. Because why would Amy Rysdam log into either account to change things if both accounts were inactive as far as she knew? And Freel was dead by this time. Yet *someone* logged into the "Amy Rysdam" account on April 27, 2020 and changed the address to 717 Wabash in Ottumwa. She had already been denied benefits on *her* account, and the deadline to challenge this ran a week before, and she had already stopped filing for benefits two weeks before April 27, 2020. Notably, even if we assume Amy Rysdam was updating her claim at about the time she moved, even though she never again claimed on it, the fact is the debit card on Freel's account had already been mailed to the address where she was living, and the email on Freel's account is one Amy Rysdam was using in 2023. So Amy moved, and *someone* updated the address on an inactive and locked claim. The active claim, Freel's, continued to pay claims benefits on the debit card that had been sent to East Mary St. right up until the debit card change in January 2021.

On January 2, 2021 the US Bank debit card was mailed to the East Mary Street address. But Amy wasn't living there anymore. And so while claims continued to be made and money was placed *on* the U.S. Bank account, no money ever came *off* that debit card. So whoever was spending the Bank of America money, and who was continuing to file claims, obviously *thought* they were putting money on the card in their possession, but they weren't. The claims were putting that money on the US Bank card, which was not in possession of the person filing claims, and this is why the money was diligently claimed for but never spent. By January 1, 2021 the Bank of America card was down to \$133. (Ex. 13). Then, after about three months of money not being spent on the US Bank card, someone logged into Freel's account and change the phone number to 641-455-6627. This was on March 29, 2021. On June 14, 2021 the IWD investigator contacted the Claimant *at this number*. The phone number change was on March 29, and three days later someone changed the payment method to a bank account which has been held jointly by Freel and Amy at South Ottumwa Savings Bank

since December of 2017. After Freel died Amy had survivorship rights on this account. (Ex. 14). Moreover, the address on June 23, 2021 statement for this bank account was 717 Wabash Ave in Ottumwa. This account was active showing multiple Ottumwa area transactions in March and April of 2021. What this means is that after three months of not getting money placed on the Bank of America card *someone* switched the phone number to the phone in Amy's possession, and switched the payment method to Amy's Bank account. This chain of event is easily explained if Amy Rysdam committed fraud.

She filed a claim, found out she wasn't going to be paid. Then either already with intent to defraud (because a layoff was claimed, but Freel had not been laid off), or even with a legitimate motive, a new claim was filed with Amy's (maiden) name and email, but Freel's social security number and birthday. Frankly, if it were necessary that we resolve this factual issue (and it isn't) we would find more likely than not that this claim was filed with the intent that it be Freel's claim, and this is why taxes were withheld, but that Amy actually handled filing the claim, and this is why her name and email are on the claim and that it what Freel sought to change before he died. But no fraud is alleged for the period *before* Freel died and so we do not rule this definitively. Of course, we do find that Amy was involved in filing Freel's claim for him as she told the investigator.

At some point Amy moved. She then updated the address to 717 Wabash on her claim (either on purpose, or because she thought she was updating Freel's but got confused). Then Freel died. Amy continued to claim every week with the debit card she either took with her or obtained around the time of Freel's death. Once she discovered the card was no longer getting paid out she changed the info on Freel's claim. First the phone was changed to the phone she had in her possession (the email was already hers), and the payment method was switched to her bank. She continued to file weekly claims until the scheme was finally detected and shut down. (The fact that the South Ottumwa Saving Bank account was not *paid* after the first week was based on the action of the State, not Amy Rysdam. Amy Rysdam continue to *ask* for the benefits for at least four weeks after the switch to the bank; they just weren't getting paid). This is a straightforward chain of events remarkably consistent with the known facts. So now let's look to the alternative explanation.

First, a fraudster will not continue file every week for seven months if they never had the debit card. So, we have to posit someone who had access to the Bank of American debit card other than Freel (who was dead) or Amy. Recall, Amy told the investigator she had helped Freel with his claim, we know she accompanied him to the IWD offices, and we know she admits having seen the card. We have no suggestion of who this anonymous debit card thief might be. Next this thief did not receive the US Bank card that was sent to the East Mary address. Once the thief figured that out, that anonymous thief then decided to update Freel's account. We know the thief did the update, because in this scenario no one else knew that there was a dead person's debit card that was still getting money paid. An innocent Amy would have no reason to even *think* about Freel's account once he was dead. So, the thief did the update. That means this debit card thief had to have Freel's login info – his SSN and PIN. We know Amy had this information since she admitted to the investigator that she had helped Freel with his claim. And the notion that the spouse and joint bank account holder did not know (or have the ability to locate) Freel's social security number is not credible at all. But Amy has it that this unknown thief not only had the card, but the login info. And then for some reason this person not only continued to use Amy's gmail account, but changed the phone number to the phone she had, and the payment method to the account she had had since 2017. So Amy posits an unknown thief who inexplicably used her phone, and her gmail, who had access to Freel's social security number *and* PIN, and also had access to *her* banking information.

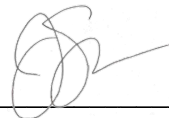
Taking a closer look at the banking information Amy Rysdam claims that she thought the account was inactive. But the bank statement from April 23, 2021 shows a balance forward of over \$900. It also shows multiple purchases in March and April, including a transfer to paypal. Also it shows *in addition to the IWD* deposits there was \$1,900 in deposits made to this account. So, Amy Rysdam posits a thief that is using her bank account for routine banking, including making deposits, rather than just trying to get the IWD money out of it.

All that be said about this is that it is not impossible. But it is highly incredible, and far more credible is that Amy did it. When Freel died Amy gained possession of the debit card (if she didn't have it already), she claimed every week because she was the one who filed Freel's claim, and she changed the phone and bank to her phone and bank using that same login info. It has been proven by the State by a preponderance of the evidence, and in fact by clear and convincing evidence, that Amy Rysdam committed unemployment fraud as described in the findings of fact.

The Department submitted additional evidence to the Board which was not contained in the administrative file and which was not submitted to the administrative law judge. While the additional evidence was reviewed for the purposes of determining whether admission of the evidence was warranted despite it not being presented at hearing, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision. There is no sufficient cause why the new and additional information submitted was not presented at hearing. Accordingly, none of the new and additional information submitted has been relied upon in making our decision, and none of it has received any weight whatsoever, but rather all of it has been wholly disregarded.

DECISION:

The administrative law judge's decision dated September 19, 2023 is **REVERSED**. The Employment Appeal Board concludes that Amy Rysdam is overpaid \$1,800 in Lost Wages Assistance for the six weeks between July 26, 2020 and September 5, 2020.



James M. Strohman



Myron R. Linn

RRA/fnv

DATED AND MAILED: NOV 17 2023