

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

VICTORIA CONRAD
Claimant

APPEAL 22A-UI-12291-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS & RECOVERY**

**OC: 03/31/19
Claimant: Appellant (4R)**

Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Code § 96.5(8) – Administrative Penalty
Public Law 116-136, Sec. 2107 – Pandemic Emergency Unemployment Compensation (PEUC)
Iowa Admin. Code r. 871-25.9 – Misrepresentations

STATEMENT OF THE CASE:

On May 4, 2022, Victoria Conrad (claimant/appellant) filed an appeal from the April 29, 2022, reference 06, unemployment insurance decision that concluded the claimant was overpaid \$10,396.00 in PEUC benefits for the twenty-three week period ending June 5, 2021. Additionally a 15% administrative penalty was added due to a determination that the claimant had engaged in misrepresentation. A telephone hearing was held at on 11:00 a.m. on June 29, 2022 pursuant to due notice. The claimant, Victoria Conrad, participated and testified. Iowa Workforce Development Investigations & Recovery participated through investigator Seth Jones. Department Exhibit 1 – 3 and Claimant's Exhibit A were admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant overpaid benefits?
Was the claimant overpaid PEUC benefits?
Did IWD properly impose a penalty based upon the claimant's misrepresentation?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant was incarcerated in the Dubuque County Jail on November 27, 2020. She was transferred to the custody of the Iowa Department of Corrections (DOC) – Iowa Correctional Institute for Women (ICIW) on February 23, 2021, and remains in the custody of the DOC.

From December 27, 2020 through June 5, 2021, claims for unemployment benefits were filed under the claimant's name and social security number and \$10,396.00 in PEUC benefits were deposited to a US Bank debit. The claimant was not eligible for benefits due to her incarceration. See 22A-UI-12290-JD-T.

In October of 2021, IWD was alerted that benefits were paid to the claimant while she was incarcerated in Dubuque County Jail and ICW. The department investigated this information and determined that someone using an IP address in the Dubuque, Iowa area had been filing unemployment benefits using the claimant's name and social security number. (D2-1) The agency's investigation determined that the claimant was not the person actually filing for these benefits due to her location and inability to access the internet while incarcerated. *Id.* The benefits were deposited to a US Bank debit card that was mailed to the claimant's step-father's address in Dubuque, Iowa. The claimant lived at this address prior to her incarceration. The email address associated with the US Bank debit card is bowerslawrencer@gmail.com. Larry/Lawrence Bowers is the claimant's step-father and is listed as the claimant's emergency contact with the Iowa DOC. *Id.*

Mr. Jones reviewed the claimant's prison records and three recorded phone calls between the claimant and Mr. Bowers but no further information or incriminating statements were gleaned from the records review or the recorded conversations. IWD switched debit card providers in December 2020 - January 2021 from Bank of America to US Bank.

The claimant did not submit any claims for benefits after she was incarcerated and did not direct anyone to submit claims on her behalf. The claimant's prison records are devoid of any information that suggest that the claimant was engaged in any fraudulent activity. (Claimant's Exhibit A). The claimant attempted to file a police report regarding the fraud issue with the Dubuque Police Department after becoming aware of the overpayments.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was overpaid PEUC benefits.--+

Public Law 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).

(e) FRAUD AND OVERPAYMENTS. —

...

(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 emergency 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.

The decision that denied claimant regular unemployment insurance benefits remains in effect. Because claimant is not eligible for UI benefits, claimant is not eligible for PEUC benefits. Therefore, claimant has received PEUC benefits to which they were not entitled. The administrative law judge concludes that claimant has been overpaid \$10,396.00 in PEUC benefits for the twenty-three week period ending June 5, 2021.

The next issue is whether the imposition of a 15% penalty due to fraud or misrepresentation was warranted

The Department is authorized to impose an administrative penalty when it determines that a claimant has within the thirty-six preceding calendar months, willfully and knowing failed to disclose a material fact with the intent to obtain unemployment benefits to which the individual is not entitled. Iowa Code section 96.5(8).

Iowa Code section 96.16(4)(a) and (b) provide in part:

4. Misrepresentation.

a. An individual who, by reason of the nondisclosure or misrepresentation by the individual or by another of a material fact, has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in the individual's case, or while the individual was disqualified from receiving benefits, shall, be liable to repay to the department for the unemployment compensation fund, a sum equal to the amount so received by the individual. If the department seeks to recover the amount of the benefits by having the individual pay to the department a sum equal to that amount, the department may file a lien with the county recorder in favor of the state on the individual's property and rights to property, whether real or personal. The amount of the lien shall be collected in a manner similar to the provisions for the collection of past-due contributions in section 96.14, subsection 3.

b. The department shall assess a penalty equal to fifteen percent of the amount of a fraudulent overpayment. The penalty shall be collected in the same manner as the overpayment. The penalty shall be added to the amount of any lien filed pursuant to paragraph "a" and shall not be deducted from any future benefits

payable to the individual under this chapter. Funds received for overpayment penalties shall be deposited in the unemployment trust fund.

“Fraud” means the intentional misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself or another or to avoid the verification and payment of employment security taxes; a false representation of a matter of fact, whether by statement or by conduct, by false or misleading statements or allegations; or by the concealment or failure to disclose that which should have been disclosed, which deceives and is intended to deceive another so that they, or the department, shall not act upon it to their, or its, legal injury. Iowa Admin. Code r. 871-25.1. “Misrepresentation” means to give misleading or deceiving information to or omit material information; to present or represent in a manner at odds with the truth. Iowa Admin. Code r. 871-25.1.

In a fraud case, the burden of proof lies with the agency to establish the intent to defraud. *Gipson v. IDJS*, 315 N.W.2d 834 (Iowa App. 1981). It is clear that someone filed for and received benefits under the claimant’s social security number and those funds were deposited to a US Bank Card that was issued in the claimant’s name. There is no evidence that the claimant directed anyone to file for and receive benefits on her behalf and her testimony on this issue is credible.

IWD has failed to meet its burden of proof in establishing that the claimant engaged in fraud.

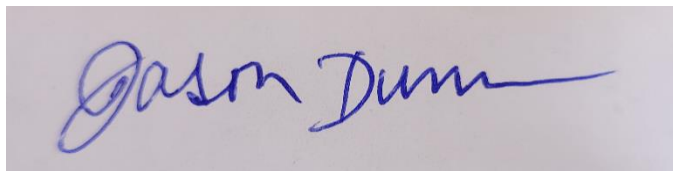
DECISION:

The April 29, 2022, reference 06, unemployment insurance decision is modified in favor of the appellant. The claimant was overpaid \$10,396.00.00 in PEUC benefits but there is no evidence that the claimant engaged in fraud. The 15% penalty is removed.

REMAND:

This issue of whether the claimant’s social security number improperly used by a third party is remanded to the Integrity Bureau for investigation and determination.

The claimant is eligible to apply for a waiver of her overpayment balance. That request for waiver shall be submitted to the agency. .



Jason Dunn
Administrative Law Judge II

September 16, 2022
Decision Dated and Mailed

jd/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.

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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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 se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.