

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

AYRIN J. ALEXANDER
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 22A-UI-18560-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (4R)

Iowa Code § 96.3(7) - Recovery of Benefit Overpayment – Lost Wages Assistance Program
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Admin. Code r. 871-25.1 – Misrepresentation & Fraud

STATEMENT OF THE CASE:

On November 3, 2022, the claimant/appellant filed an appeal from the October 27, 2022 (reference 04) Iowa Workforce Development (“IWD”) unemployment insurance decision that found claimant was overpaid Lost Wage Assistance Program (LWAP) benefits in the amount of \$300.00 for one weeks ending September 5, 2020 due to failing to report wages. IWD imposed a 15% administrative penalty due to misrepresentation. The parties were properly notified of the hearing. A telephone hearing was held on November 30, 2022. This hearing was consolidated with Appeal No. 22A-UI-19558-CS-T; 22A-UI-19559-CS-T; 22A-UI-19561-CS-T; and 22A-UI-19562-CS-T. The claimant participated personally. Kara Harrison participated on behalf of IWD. IWD Exhibits A1, A2, A3, A4, A5, A6, A7, B1, B2, C1, C2, C3, C4, C5, C6, C7, C8, C9, and C10 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

ISSUES:

- I. Did IWD correctly determine that claimant was overpaid LWAP benefits and was the overpayment amount correctly calculated?
- II. Did IWD properly impose a penalty based upon claimant’s misrepresentation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits with an effective date of March 29, 2020. Her weekly benefit amount was \$278.00 based upon the wages reported in her base period.

Claimant filed weekly-continued claims beginning March 29, 2020. Claimant admits she filed for benefits through April 25, 2020 and denies filing for any additional weeks after that week. Claimant initially filed for benefits due to Walmart, Inc.'s COVID policy that prohibited employees from working if they showed a broad array of symptoms. Claimant was sent home from time to time because she was had one of the symptoms the employer prohibited employees from having in order to work. As a result, claimant filed for benefits to supplement the time(s) she was sent home. Claimant stopped working for Walmart Inc. on or about August 6, 2020. (Exhibit A3-1). Claimant began working for The City of Ames on or about July 12, 2020. (Exhibit A3-2). Claimant is a full-time college student and it is unclear whether claimant was a full-time college student at the time she filed for benefits. (See Appeal).

Claimant's administrative record shows continuing weekly claims were filed on her behalf through April 25, 2021. Each weekly payment was deposited into the same bank account during the entire claim period. Additionally, each weekly claim was manually entered and no one but claimant had access to her unemployment login information.

Claimant filed weekly-continued claims beginning March 29, 2020 and consecutively each week thereafter during her benefit year. Claimant received regular unemployment insurance benefits funded by the State of Iowa in the amount of \$7,228.00 from March 29, 2020 through December 5, 2020, when she reached her maximum benefit amount.

Claimant was then paid Pandemic Emergency Unemployment Compensation (PEUC) benefits in the amount of \$4,448.00 beginning December 6, 2020 through March 27, 2021. Claimant was paid Federal Pandemic Unemployment Compensation (FPUC) benefits as a supplement to her regular unemployment insurance benefits and her PEUC benefits. These benefits were paid in the weekly amount of \$600.00 for the weeks between April 26, 2020 and July 25, 2020 and then \$300.00 per week for the weeks between December 27, 2020 and March 27, 2021. Claimant was paid Lost Wages Assistance (LWA) benefits beginning July 26, 2020, through September 5, 2020, as a supplement to her regular unemployment insurance benefits.

IWD conducted an audit and discovered claimant was working for Walmart, Inc. and The City of Ames during the weeks in which she filed her weekly-continued claims for benefits. (Exhibits A3-1 and A3-2). IWD sent Walmart, Inc. and The City of Ames a request of wage records for claimant. The employers responded to the request of wage records. (See Exhibits A3-1, A2-2). During the audit Iowa Workforce Development concluded there was a wage discrepancy for the following weeks. (Exhibit C2-1-2).

For the week ending August 15, 2020, claimant reported earning weekly wages of \$334.00. (KCCO). Claimant received \$0.00 in state unemployment benefits and did not receive LWAP benefits. (DBRO). Wage records from The City of Ames establish claimant received \$80.90 in wages. See Exhibit A3-2.

For the week ending August 22, 2020, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in state unemployment benefits and \$300.00 in LWAP benefits. (DBRO and KPYX). Wage records from The City of Ames establish claimant received \$105.66 in wages. See Exhibit A3-2.

For the week ending August 29, 2020, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in state unemployment benefits and \$300.00 in LWAP benefits. (DBRO and KPYX). Wage records from The City of Ames establish claimant received \$236.09 in wages. See Exhibit A3-2.

For the week ending September 5, 2020, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in state unemployment benefits and \$300.00 in LWAP benefits. (DBRO and KPYX). Wage records from The City of Ames establish claimant received \$307.09 in wages. See Exhibit A3-2.

Because the claimant did not report her wages for the week ending September 5, 2020 IWD found claimant was overpaid state unemployment benefits for the week. In appeal 22A-UI-18558-CS-T it has been determined claimant is disqualified from receiving state unemployment benefits for the week ending September 5, 2020.

Since claimant was disqualified from receiving state unemployment benefits for the week ending September 5, 2020, IWD found claimant was overpaid \$300.00 in LWAP benefits. (Exhibit C5). IWD imposed a 15% penalty due to misrepresentation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes IWD correctly calculated the claimant's overpayment of LWAP benefits. The 15% penalty due to misrepresentation was improperly imposed.

Iowa Code section 96.3(7) provides, in pertinent part:

Payment — determination — duration — child support intercept.

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.

Lost Wage Assistance Payments was 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 initial 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.

The administrative law judge in appeal 22A-UI-18558-CS-T found claimant is disqualified from receiving state unemployment benefits for the week ending September 5, 2020. Because claimant is not eligible for state unemployment benefits for this week, claimant is not eligible for LWAP benefits. Therefore, claimant has received LWAP benefits to which claimant was not entitled. The administrative law judge concludes claimant has been overpaid LWAP benefits for one week for a gross total amount of \$300.00 beginning August 30, 2020, through September 5, 2020. These benefits must be recovered in accordance with the law.

The next issue to be determined is whether the imposition of an administrative penalty due to fraud was proper. The administrative law judge concludes applying the penalty to the LWAP overpayment was improper. LWAP was authorized through FEMA emergency money. There is no authority under FEMA that allows the imposition of a 15% penalty for LWAP fraud. See *Boardman v. IWD*, EAB decision 22B-UI-03760.

DECISION:

The October 27, 2022 (reference 04) unemployment insurance decision is MODIFIED in favor of Appellant. The claimant is overpaid LWAP benefits in the amount of \$300.00 for one week ending September 5, 2020 and is required to repay the agency this overpayment balance. The imposition of the administrative penalty of 15% is improper. The 15% penalty imposed to claimant's LWAP benefits overpayment shall be removed.

Claimant should note the overpayment amount may increase after the issues on remand have been determined.

REMAND:

The issue of whether claimant is entitled to unemployment benefits is remanded to the benefits bureau for an initial investigation and determination. The benefits bureau should look at the issues of whether claimant was employed for the same hours and wages, and whether claimant was totally, partially, or temporarily unemployed with employers Walmart Inc. and The City of Ames during this claim year. The benefits bureau should consider whether this also disqualifies claimant from LWAP benefits.



Carly Smith
Administrative Law Judge

December 7, 2022

Decision Dated and Mailed

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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.