

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ASHLEY A BERINOBIS
Claimant

APPEAL NO. 24A-UI-04564-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 03/22/20
Claimant: Appellant (4)**

P.L. 116-136, § 2107(e) – Pandemic Emergency Unemployment Compensation Overpayment
Iowa Code section 96.16(4)(a) – Misrepresentation
Iowa Code section 96.5(8) – Administrative Penalty

STATEMENT OF THE CASE:

On May 10, 2024, Ashley Berinobis (claimant) filed a timely appeal from the May 6, 2024 (reference 02) decision that held she was overpaid \$6,184.00 in Pandemic Emergency Unemployment Compensation (PEUC) for 24 weeks between August 30, 2020 and March 20, 2021, based on the Iowa Workforce Development investigator's conclusion that Ms. Berinobis failed to report wages earned with Waterloo Community School District. The decision also assessed a 15 percent penalty and an additional administrative penalty, based on the investigator's conclusion that Ms. Berinobis misrepresented her wages during the period in question. After due notice was issued, a hearing was held on May 28, 2024. Claimant participated. Debbie Rumbaugh, Investigator 2, represented Iowa Workforce Development. There were five appeal numbers set for a consolidated hearing: 24AUI04563JTT, 24AUI04564JTT, 24AUI04565JTT, 24AUI04566JTT, and 24AUI04567JTT. Claimant's Exhibit A through E and IWD's Exhibits 1 through 9 were received into evidence. The administrative law judge took official notice of the following IWD administrative records: DBIN, KPYX, WAGEB, WAGEC, and KLOG.

ISSUES:

Whether the claimant was overpaid \$6,184.00 in Pandemic Emergency Unemployment Compensation (PEUC) for 24 weeks between August 30, 2020 and March 20, 2021.

Whether the 15 percent penalty and administrative penalty for misrepresentation should be imposed.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Ashley Berinobis (claimant) established an original claim for benefits that was effective March 22, 2020. This was Ms. Berinobis first ever unemployment insurance claim. Iowa Workforce Development set Ms. Berinobis' weekly benefit amount for regular benefits at

\$518.00. At the time Ms. Berinobis established her claim for benefits, the application process required that Ms. Berinobis agree to read, know and following the contents of the unemployment insurance claimant handbook, which IWD made available at its website. The handbook included the following:

STEPS & RESPONSIBILITIES TO FILE AN UNEMPLOYMENT INSURANCE CLAIM
PREPARING TO FILE THE 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, vacation and severance pay, if applicable.

..
WHAT TO REPORT ON THE WEEKLY CLAIM

You must report all gross earnings and gross wages on the weekly claim. Wages are reportable when earned, not when paid. Gross earnings or gross wages are your earnings before taxes or other payroll deductions are made. For additional information, please refer to the page on reportable income.

...
REPORTING EARNINGS

Gross earnings or gross wages are your earnings before taxes or other payroll deductions are made. Earnings or wages must be reported on the weekly claim during the week the wages are earned, not when the wages are paid. Earnings must be reported even when you have not received the payment. To calculate the amount to report, multiply the number of hours you worked by your hourly wage. Example: 10 hours X \$12.00/hour = \$120.00 in gross earnings.

You should report the full gross amount of earnings and we will calculate any deductions. Deductions and/or earnings are calculated differently depending on the type of income....

See IWD Exhibit 9, Unemployment Insurance Claimant Handbook 2020/2021.

Ms. Berinobis established her claim for unemployment insurance benefits in response to her part-time, supplemental employer, L Triple J, Inc., d/b/a LJ's Bar & Grill, laying her off in connection with a temporarily shutting down in mid-March 2020 in response to the COVID-19 pandemic. Prior to the shutdown, Ms. Berinobis as a part-time server, bartender and occasional manager. Ms. Berinobis' wages for the server and bartender work was \$4.35 an hour plus tips, which ranged from \$75.00 to \$200.00 per shift. Ms. Berinobis' shift manager wage was \$18.00 an hour. Prior to the shutdown, Ms. Berinobis would generally four shifts a week at LJ's. After LJ's laid off Ms. Berinobis in March 2020, LJ's did not recall Ms. Berinobis to the employment.

IWD records reflect that LJ's reported quarterly wages paid as follows:

<u>Quarter/Year</u>	<u>Wages Reported by Employer</u>
4/2018	3,606.94
1/2019	2,748.13
2/2019	3,699.34
3/2019	3,269.13
4/2019	Not available
1/2020	2,174.06
2/2020	100.19 (work performed on or before 3/14/20).

The wages reported by LJ's were substantially less than the combined wages and tips Ms. Berinobis submits she received earned from the LJ's employment. This is because Ms. Berinobis underreported her tips to the employer. Ms. Berinobis' practice was to report only the tips paid by credit card and to not report tips paid in cash.

At the time Ms. Berinobis established her unemployment insurance claim, her primary employer was the Waterloo Community School District, where Ms. Berinobis worked as a full-time Behavior Intervention Specialist. Ms. Berinobis started with the District in 2014. At the time Ms. Berinobis established her claim for unemployment insurance benefits, her pay with the school district was \$15.65 an hour and her work hours were 7:00 a.m. to 3:30 p.m., Monday through Friday when school was in session. The school wages for a 35-hour full-time workweek totaled \$547.75. Though Ms. Berinobis had an academic-year appointment and earned the wages during the academic year, the school district paid the wages monthly over a 12-month period. Ms. Berinobis established her unemployment insurance claim despite continuing to enjoy the wages from the full-time school employment.

After Ms. Berinobis established her claim, she made weekly claims for each of the weeks between March 22, 2020 and April 17, 2021. In connection with each weekly claim, Ms. Berinobis had to respond to the question of whether she had worked during the week for which she was making the claim. For each claim week, Ms. Berinobis reported she was had not worked and had earned no wages. Prior to submitting each weekly claim, Ms. Berinobis certified the accuracy of the information she provided in making the claim. Ms. Berinobis submits that she was focused on LJ employment, rather than on the wages she continued to receive from the full-time school employment.

Based on Ms. Berinobis' report of zero wages, IWD paid \$518.00 in regular benefits for each of the 23 weeks between March 22, 2020 and August 22, 2020. IWD also paid \$441.89 in regular benefits for the week that ended August 29, 2020, during which week Ms. Berinobis reached the maximum benefit amount for regular benefits.

Based on Ms. Berinobis' report of zero wages, IWD paid Ms. Berinobis \$518.00 in Pandemic Emergency Unemployment Compensation (PEUC) for each of the 13 weeks between August 30, 2020 and November 28, 2020.

Based on Ms. Berinobis' report of zero wages, IWD paid \$518.00 in PEUC for each of the 12 weeks between December 27, 2020 and March 20, 2021.

Based on Ms. Berinobis' report of zero wages, IWD paid Ms. Berinobis \$600.00 in weekly Federal Pandemic Unemployment Compensation (FPUC) benefits for each of the 17 weeks between March 28, 2020 and July 25, 2020. Ms. Berinobis' eligibility for the FPUC benefits depended on her eligibility for regular benefits for those weeks.

Based on Ms. Berinobis' report of zero wages, IWD paid Ms. Berinobis \$300.00 in Lost Wage Assistance Payments (LWAP) benefits for each of the six weeks between July 26, 2020 and September 5, 2020. Ms. Berinobis' eligibility for the LWAP benefits depended on her eligibility for regular benefits or PEUC benefits for those weeks.

Based on Ms. Berinobis' report of zero wages, IWD paid, IWD paid Ms. Berinobis \$300.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for each of the 12 weeks between December 27, 2020 and March 20, 2021. Ms. Berinobis' eligibility for the FPUC benefits depended on her eligibility for regular benefits or PEUC benefits for those weeks.

In February 2021, IWD became aware of the conflict between the zero wages Ms. Berinobis consistently reported on her weekly claims and the quarterly wage reports submitted by the Waterloo Community School District. IWD Benefits Bureau referred the matter to the IWD Investigations and Recovery personnel for a wage audit.

IWD did not commence a wage audit until March 2024. IWD solicited wage information from the Waterloo Community School District for each of the weeks between March 22, 2020 and March 14, 2021.

The District responded on March 20, 2024 with accurate and reliable information regarding the number of hours worked and the wages earned in connection with each audited week. See Exhibit 2, pages 9 and 10. Ms. Berinobis concedes the accuracy of the information provided by the District. According to wages and hours worked information the school district provided, Ms. Berinobis worked full-time (35 hours a week) and earned \$547.75 in wages during each of the 10 weeks between March 22, 2020 and May 30, 2020. That amount exceeded Ms. Berinobis' weekly benefit amount for regular benefits plus \$15.00. Ms. Berinobis worked 21 hours and earned \$328.65 in wages during the week that ended June 6, 2020, the last week of the academic year. The school district did not have work for Ms. Berinobis during the 10 weeks between June 7, 2020 and August 15, 2020, during the traditional summer break between academic years. Ms. Berinobis returned to work during the week that ended August 22, 2020, during which week she worked 21 hours and earned \$328.65 in wages. The Berinobis then worked full-time (35 hours) during the weeks that ended August 29 and September 5, 2020 and earned \$547.75 for each week. Ms. Berinobis continued to work 35 hours a week between September 6, 2020 and October 10, 2020, but her weekly wages reduced to \$416.85. Ms. Berinobis continued to work and continued to earn substantial weekly wages through the week that ended March 13, 2021. Ms. Berinobis did not work and did not earn wages during the week that ended March 20, 2021, which was the last audited week.

Ms. Berinobis had failed to report any wages for 30 weeks during which she earned wages from the school district, as indicated by the school district's response to the Request for Wage Records.

The IWD investigator used the information provided by the school district to redetermine Ms. Berinobis eligibility. Based on that information, the investigator determined Ms. Berinobis was overpaid benefits as follows. The investigator determined Ms. Berinobis was overpaid \$5,580.00 in regular benefits for the 11 weeks between March 22, 2020 and June 6, 2020 and \$718.00 in regular benefits for two weeks between August 16 and 29, 2020, for a total regular benefits overpayment of \$6,298.00. See Exhibit 2, pages 3 and 4. The investigator determined that Ms. Berinobis was overpaid \$3,639.00 PEUC benefits for the 13 weeks between August 30, 2020 through November 28, 2020 and \$2,545.00 in PEUC benefits for 10 weeks between January 3, 2021 and March 13, 2021, for a total PEUC overpayment of \$6,184.00. See Exhibit 2, pages 5 and 6. The investigator determined Ms. Berinobis was overpaid \$5,400.00 in FPUC benefits for the nine weeks between March 29, 2020 and May 30, 2020. See Exhibit 2, page 7. The investigator determined Ms. Berinobis was overpaid \$600.00 in Lost Wages Assistance Payment (LWAP) for the two weeks between August 23, 2020 and September 5, 2020. See Exhibit 2, page 8.

The investigator did not explore whether any weeks of Ms. Berinobis' claim would be affected by the application of the between-academic-terms disqualification set forth at Iowa Code section 96.4(5).

On May 2, 2024, the investigator interviewed Ms. Berinobis to complete the wage audit investigation. During the meeting, Ms. Berinobis conceded the accuracy of the wage information provided by the school district. Ms. Berinobis continued to be focused on her intention and belief that her claim for benefits only pertained to LJ's and her receipt of zero wages from that employment. The investigator took the opportunity to counsel Ms. Berinobis as follows:

Claimant now understands she was to report all her wages. During the interview the claimant kept stating she only filed for LJ and not the school. I explained to the claimant that you can not pick and choose ... the employer you file for unemployment on. You have to file for unemployment on all your employers and report all your gross wages each week that you make from all your employers.

REASONING AND CONCLUSIONS OF LAW:

PL 116-136, Section 2107(e) provides, in relevant part, as follows:

(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.

(3) Recovery by State agency

(A) In general

The State agency shall recover the amount to be repaid, or any part thereof, by deductions from any pandemic emergency unemployment compensation payable to such individual under this section or from any unemployment compensation payable to such individual under any State or Federal unemployment compensation law administered by the State agency or under any other State or Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the pandemic emergency unemployment compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State.

(B) Opportunity for hearing

No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(4) Review

Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

Gross wages must be reported to Iowa Workforce Development as part of the weekly claim for the week in which the wages were earned. See Iowa Administrative Code rules 87124.2(1)(g)(3)(2) and 87124.2(2)(e)(2).

Iowa Admin. Code rule 87124.18, provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

Ms. Berinobis was overpaid \$6,184.00 in Pandemic Emergency Unemployment Compensation (PEUC) for 23 weeks between August 30, 2020 and March 13, 2021. Ms. Berinobis was overpaid \$3,639.00 PEUC benefits for the 13 weeks between August 30, 2020 through November 28, 2020 and \$2,545.00 in PEUC benefits for 10 weeks between January 3, 2021 and March 13, 2021, for a total PEUC overpayment of \$6,184.00. During the week that ended September 5, 2020, Ms. Berinobis earned \$548.00 in wages, which was more than the \$518.00 weekly plus \$15.00 and which reduced her benefit eligibility for that week to zero. For each of the 12 weeks between September 6, 2020 and November 28, 2020, and for each of the 10 weeks between January 3, 2021 and March 13, 2021, Ms. Berinobis earned substantial wages. For each of the 22 weeks, the amount of wages that exceeded one-fourth of the weekly benefit amount was deductible from unemployment insurance benefits, which reduced the benefit eligibility for each week as indicated in Exhibit 2, pages 5 and 6. Ms. Berinobis' failure to report wages caused an overpayment of benefits for each of the weeks in question. Ms. Berinobis must repay the overpaid PEUC benefits unless she applies for and is deemed eligible for waiver of repayment of overpaid PEUC benefits.

The remaining question is whether the 15 percent penalty and additional administrative penalty for misrepresentation should be imposed.

Iowa Code section 96.16(4)(a) provides:

Offenses

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.

(Emphasis added).

Iowa Code section 96.5(8) provides:

Administrative penalty. If the department finds that, with respect to any week of an insured worker's unemployment for which such person claims credit or benefits, such person has, within the thirty-six calendar months immediately preceding such week, with intent to defraud by obtaining any benefits not due under this chapter, willfully and knowingly made a false statement or misrepresentation, or willfully and knowingly failed to disclose a material fact; such person shall be disqualified for the week in which the department makes such determination, and forfeit all benefit rights under the unemployment compensation law for a period of not more than the remaining benefit period as determined by the department according to the circumstances of each case. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter.

Iowa Admin. Code r. 871- 25.1 provides:

Definitions.

"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.

"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.

(Emphasis added).

It is the duty of the administrative law judge as the 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 administrative law judge 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, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining

the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The claimant credibly testified that she did not believe that she needed to report the wages earned with Waterloo Community School District because she was filing unemployment "for" her other employer, LJ's. The investigator's notes regarding the May 2, 2024 meeting with the claimant reflect that the claimant continued under her erroneous belief until the investigator corrected her at the time of the May 2, 2024 interview. The weight of the evidence does not support the conclusion that the claimant *intentionally* misused facts to gain benefits or that she *intentionally* concealed material information to deceive IWD. The claimant's actions and/or omissions in failing to report wages earned with Waterloo Community School District not intentional. Accordingly, the evidence does not support imposition of the 15 percent penalty or administrative penalties associated with fraud. The penalties shall be removed.

DECISION:

The May 6, 2024 (reference 02) PEUC overpayment decision is MODIFIED in favor of the claimant/appellant as follows. The claimant was overpaid \$3,639.00 PEUC benefits for 13 weeks between August 30, 2020 through November 28, 2020 and \$2,545.00 in PEUC benefits for 10 weeks between January 3, 2021 and March 13, 2021, for a total PEUC overpayment of \$6,184.00 for 23 weeks between August 30, 2020 and March 13, 2021. The claimant must repay the overpaid PEUC benefits unless she applies for and is deemed eligible for waiver of repayment of overpaid PEUC benefits.

The overpayment was not based on intentional misrepresentation or fraud. The 15% fraud penalty and additional administrative penalties associated with fraud shall be removed.

The claimant should immediately contact IWD to explore waiver of repayment of the PEUC overpayment.



James E. Timberland
Administrative Law Judge

June 11, 2024
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
6200 Park Ave Suite 100
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
6200 Park Ave Suite 100
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 adquiriera 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.