

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

RACHEL BOETTGER
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 22A-UI-16765-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Rachel Boettger, the claimant/appellant, filed an appeal from the Iowa Workforce Development (IWD) August 26, 2022 (reference 03) unemployment insurance (UI) decision that concluded she was overpaid REGULAR (state) UI benefits in the gross amount of \$1,209.00, and Federal Pandemic Unemployment Compensation (FPUC) benefits in the gross amount of \$5,400.00. The parties were properly notified about the hearing. A telephone hearing was held on September 30, 2022. Ms. Boettger participated personally. The department did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Has Ms. Boettger been overpaid REGULAR (state) UI benefits, and/or FPUC benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Boettger filed an initial claim for REGULAR (state) UI benefits effective March 29, 2020. Ms. Boettger filed weekly UI claims and IWD paid her REGULAR (state) UI benefits in the gross amount of \$1,209.00 for 9 weeks between March 29, 2020 and May 30, 2020. IWD also paid Ms. Boettger FPUC benefits in the gross amount of \$5,400.00 for the same 9 weeks.

FPUC was a program under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 that provided additional payment to those individuals that are receiving state or federal unemployment insurance payments. It is funded by the federal government, not by state unemployment taxes paid by employers. The Continued Assistance for Unemployed Workers Act of 2020 (enacted December 27, 2020) and American Rescue Act of 2021 (enacted March 11, 2021) extended FPUC benefits for weeks of unemployment to September 6, 2021. The FPUC amount was \$600.00 per week from April 5, 2020 through July 31, 2020. The FPUC amount was \$300.00 per week from December 27, 2020 through September 5, 2021. Governor Reynolds ended Iowa's participation in federal pandemic-related unemployment benefit programs, including the FPUC program, effective June 12, 2021.

Almost one year after she filed her initial claim effective March 29, 2020, and after she had already received REGULAR (state) UI benefits, and FPUC benefits, IWD issued a March 9, 2021, (reference 01) UI decision finding Ms. Boettger not eligible for REGULAR (state) UI benefits from March 29, 2020 through May 30, 2020 because IWD records indicated that Ms. Boettger worked enough hours to be considered employed during those weeks. Ms. Boettger appealed that UI decision. The administrative law judge's decision in Appeal 21A-UI-15463-LJ-T affirmed the reference 01 UI decision, meaning Ms. Boettger is not eligible for REGULAR (state) UI benefits from March 29, 2020 through May 30, 2020.

Ms. Boettger applied for Pandemic Unemployment Assistance (PUA) benefits on November 4, 2021. PUA benefits were federal COVID-19 benefits for covered individuals who were unemployed, partially unemployed, or unable to work due to the COVID-19 pandemic, and who were not eligible for REGULAR (state) UI benefits. On June 17, 2022, IWD denied Ms. Boettger's PUA application.

REASONING AND CONCLUSIONS OF LAW:

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

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

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.

PL 116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(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 amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Ms. Boettger has been overpaid REGULAR (state) UI benefits in the gross amount of \$1,209.00 for 9 weeks between March 29, 2020 and May 30, 2020. Ms. Boettger has been overpaid REGULAR (state) UI benefits because she is not qualified and/or ineligible to receive REGULAR (state) UI benefits per the March 9, 2021 (reference 01) UI decision, and the administrative law judge's decision in Appeal 21A-UI-15463-LJ-T. These benefits should be repaid.

Since Ms. Boettger is not eligible for REGULAR (state) UI benefits from March 29, 2020 through May 30, 2020, she is also not eligible for FPUC benefits for those weeks. Ms. Boettger has been overpaid FPUC benefits in the gross amount of \$5,400.00 for 9 weeks between March 29, 2020 and May 30, 2020. These benefits should be repaid.

DECISION:

The August 26, 2022 (reference 03) UI decision is AFFIRMED. Ms. Boettger has been overpaid REGULAR (state) UI benefits in the gross amount of \$1,209.00, and FPUC benefits in the gross amount of \$5,400.00. These benefits must be repaid.



Daniel Zeno
Administrative Law Judge

October 12, 2022
Decision Dated and Mailed

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NOTE TO MS. BOETTGER:

- This decision determines you have been overpaid REGULAR (state) UI benefits and FPUC benefits. If you disagree with this decision, you may file an appeal by following the instructions on the last page of this decision.
- You may also **request a waiver of the FPUC overpayment only** by 1) applying for a waiver online, 2) applying for a waiver in writing by mail, or 3) filing an appeal. Unfortunately, the waiver does not apply to the REGULAR (state) UI overpayment.
- The **online waiver request form** is available on the Iowa Workforce Development website at: <https://www.iowaworkforcedevelopment.gov/federal-unemployment-insurance-overpayment-recovery>
- The **written waiver request** must include the following information:
 - Your name & address.
 - Decision number/date of decision.
 - Dollar amount of overpayment requested for waiver.
 - Relevant facts that you feel would justify a waiver.
- The written waiver request should be sent to:

Iowa Workforce Development
Overpayment waiver request
1000 East Grand Avenue
Des Moines, IA 50319
- If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.
- To check on your waiver application call **888-848-7442** or email iwduiatax@iwdiowa.gov

APPEAL RIGHTS. If you disagree with this 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 adquiriera 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.