

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

THOMAS J SCHMIT
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 23A-UI-05893-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (2)

15 U.S.C. § 9023(F)(2) – Waiver of FPUC Overpayment
15 U.S.C. § 9025(E)(2) – Waiver of PEUC Overpayment
PL 116-260, sec. 262(B) – Waiver of LWA Overpayment

STATEMENT OF THE CASE:

On June 8, 2023, claimant Thomas J. Schmit filed an appeal from the May 30, 2023 (reference 05) unemployment insurance decision that denied the claimant's application to waive his Pandemic Emergency Unemployment Compensation ("PEUC") benefits overpayment balance, Federal Pandemic Unemployment Compensation ("FPUC") benefits overpayment balance, and Lost Wages Assistance ("LWA") benefits overpayment balance. The parties were properly notified of the hearing. A telephonic hearing was held at approximately 9:10 a.m. on Wednesday, June 28, 2023. Appeal numbers 23A-UI-05890-LJ-T, 23A-UI-05892-LJ-T, and 23A-UI-05893-LJ-T were heard together and created one record. Claimant Thomas J. Schmit participated. Claimant's wife, Margaret Dohrer, acted as claimant's representative and also testified. The administrative law judge took official notice of the hearing record for appeal numbers 23A-UI-05889-LJ-T and 23A-UI-05891-LJ-T. All exhibits admitted during that hearing are, by extension, admitted into this hearing record. The administrative record, including claimant's unemployment insurance claim for benefits and documented weekly benefit payments, is also incorporated into this hearing record.

ISSUE:

Should the claimant's PEUC benefits overpayment balance be waived?
Should the claimant's FPUC benefits overpayment balance be waived?
Should the claimant's LWA benefits overpayment balance be waived?

FINDINGS OF FACT:

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

Claimant filed an original claim for regular unemployment insurance benefits effective March 29, 2020. Claimant was paid PEUC benefits in the gross amount of \$11,250.00 for the weeks between September 27, 2020 and May 1, 2021 based upon his eligibility for UI benefits. Claimant was also paid FPUC benefits in the gross amount of \$5,400.00 for the eighteen weeks between December 27, 2020 and May 1, 2021 based upon his eligibility for UI benefits; and he

was paid LWA benefits in the gross amount of \$300.00 for the one week between August 30, 2020 and September 5, 2020 based upon his eligibility for UI benefits.

In a decision dated August 17, 2021 (reference 01), it was determined that the claimant was not eligible for UI benefits. Then, in the decision dated April 25, 2022 (reference 02), IWD determined claimant was overpaid \$11,250.00 in PEUC benefits; \$5,400.00 in FPUC benefits; and \$300.00 in LWA benefits. Claimant filed an application for waiver of the overpayment of benefits.

UI benefits, and subsequently federal PEUC, FPUC, and LWA benefits, were initially paid to claimant because IWD had not yet determined claimant's eligibility for benefits. Claimant was advised throughout the appeals process to continue to file weekly claims. He called the customer service line at least a dozen times and talked to various representatives (all of whom remained anonymous to him), all of whom encouraged him to continue filing and to not be concerned with his actual eligibility for the benefits. Claimant routinely informed the representatives he had a doctor's note stating he was not able to work due to COVID-related health concerns.

Claimant used the benefits received to pay for necessary living expenses, including, food, housing, and healthcare. He currently receives limited Social Security Disability Insurance benefits of approximately \$1,000.00 per month. Dohrer earns an income that is not sufficient to cover the household's monthly expenses, healthcare costs, supporting their grandson, and help support her elderly mother. Claimant and Dohrer are worried for the day that one of their cars will need to be replaced or a major appliance fails, due to their tight economic situation.

REASONING AND CONCLUSIONS OF LAW:

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

PEUC Benefits:

PL 116-136 Section 2107 of the CARES Act created PEUC, a new temporary federal benefit program that provided up to 13 additional weeks of benefits to individuals who (1) had exhausted all rights to regular unemployment compensation under state or federal law with respect to a benefit year, (2) had no right to compensation with respect to a week under state or federal law, (3) were not receiving compensation under Canadian law and (4) were able to, available for and actively seeking work. This initial program ran from March 29, 2020 through December 26, 2020.

On December 27, 2020, the President signed into law the Consolidated Appropriations Act, 2021, which includes Division N, Title II, Subtitle A, the Continued Assistance Act. Section 206 reauthorized the PEUC program through March 14, 2021 (plus an additional phase-out period) and increased the number of weeks from 13 to 24. On March 11, 2021, the President signed the American Rescue Plan Act of 2021 (ARPA). Section 9016 of ARPA extends the PEUC program through September 6, 2021 and increased the number of weeks from 24 to 53.

On May 11, 2021, Governor Reynolds announced that Iowa would end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PEUC benefits in Iowa was the week ending June 12, 2021.

The CARES Act provides that a State agency may waive repayment of an overpayment in certain circumstances.

PL 116-136, Sec. 2107(e)(2) provides:

PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION.

(e) Fraud and Overpayments. –

- (1) In general. – If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of pandemic emergency unemployment compensation under this section to which such individual was not entitled, such individual –
 - (A) shall be ineligible for further pandemic emergency unemployment compensation under this section in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and
 - (B) shall be subject to prosecution under section 1001 of title 18, United States Code.
- (2) Repayment. – In the case of individuals who have received amounts of pandemic emergency unemployment compensation 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.

FPUC Benefits

PL 116-136 Section 2104 of the CARES Act created a program in which an additional \$600.00 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 March 29, 2020 through July 25, 2020. Claimants were only eligible to receive FPUC payments if they were entitled to receive benefits from another applicable program. The payments of FPUC benefits were automatic so long as a claimant was determined to be eligible under one of the other applicable programs.

Section 203 of the Continued Assistance Act also reauthorized the FPUC program for weeks of unemployment beginning after December 26, 2020 and ending on or before March 14, 2021 and modified the weekly supplement payment to \$300.00. Section 9103 of ARPA amends Section 2104 of the CARES Act of 2020 and extended the FPUC program for weeks of unemployment ending on or before September 6, 2021. The last payable week for FPUC benefits in Iowa was also the week ending June 12, 2021.

The CARES Act provides that a State agency may waive repayment of an overpayment in certain circumstances.

PL 116-136, Sec. 2104(f)2 provides:

EMERGENCY INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

(f) Fraud and Overpayments. –

- (3) In general. – If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of Federal Pandemic Unemployment Compensation to which such individual was not entitled, such individual –
 - (C) Shall be ineligible for further Federal Pandemic Unemployment Compensation in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and
 - (D) Shall be subject to prosecution under section 1001 of title 18, United States Code.
- (4) 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 amount of such Federal Pandemic Unemployment Compensation to the State agency, except that the State agency may waive such repayment if it determines that –
 - (C) the payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual and;
 - (D) such repayment would be contrary to equity and good conscience.

LWA Benefits:

On August 8, 2020, President Trump issued a memorandum to provide additional financial assistance to those individuals receiving unemployment benefits that met the eligibility requirements of the program through a grant from FEMA. The Lost Wages Assistance (LWA) program required claimants to be eligible for a weekly benefit amount of at least \$100.00 and the LWA payment was made to claimants in combination with a payment of at least \$1.00 in benefits stemming from either State of Iowa funded unemployment insurance benefits, Federal Pandemic Emergency Unemployment Compensation (PEUC) benefits program, Pandemic Unemployment Assistance (PUA) program, Extended Benefits program, Voluntary Shared Work program, Short Term Compensation program, or Trade Act benefits program. The weekly benefit amount of the LWA program was \$300.00 and the program ran from July 26, 2020 through September 5, 2020.

The Continued Assistance For Unemployed Workers Act of 2020 provides in pertinent part:

Section 262. Lost Wages Assistance Recoupment Fairness.

(a) Definitions. – In this section –

- (1) the term “covered assistance” means assistance provided for supplemental lost wages payments under subsections (e)(2) and (f) of section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174), as authorized under the emergency declaration issued by the President on March 13, 2020, pursuant to section (501)b of such Act (42 U.S.C. 5191(b)) and under any

subsequent major disaster declaration under section 401 of such Act (42 U.S.C. 5170) that supersedes such emergency declaration; and

(2) the term “State” has the meaning given the term in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(b) Waiver Authority For State Liability. – In the case of any individual who has received amounts of covered assistance to which the individual is not entitled, the State shall require the individual to repay the amounts of such assistance to the State agency, except that the State agency may waive such repayment if the State agency determines that –

- (1) the payment of such covered assistance was without fault on the part of the individual; and
- (2) such repayment would be contrary to equity and good conscience.

In order to receive a waiver of PEUC benefits, FPUC benefits, and/or LWA benefits, the overpayment must be without fault on the part of the claimant and that repayment would be contrary to equity and good conscience. Factors in determining whether the overpayment was made without fault on the part of the claimant include: (1) whether the individual made a representation in connection with the claim for LWA that resulted in or contributed to the overpayment, and whether the individual knew or should have known that the representation inaccurate; (2) whether the individual failed, or caused another person to fail, to disclose a fact in connection with the individual that resulted in or contributed to the overpayment, and whether the individual knew or should have known that the fact was significant; (3) whether the individual accepted the funds and knew, or should have known that he or she was not entitled to the payment or that the payment amount was incorrect; and (4) whether, for any other reason, the overpayment amount resulted directly or indirectly, and partially or totally, from any act or omission of the individual which was erroneous, inaccurate, or otherwise wrong. *Cf.* Iowa Admin. Code r. 871—24.50 (waiver guidance for overpayments of temporary extended unemployment compensation).

In determining whether repayment would be against equity and good conscience, the administrative law judge considers the following factors: (1) whether the individual acted in reliance on the overpayment and gave up a benefit because of the overpayment or changed their position for the worse; and (2) whether repayment would cause undue hardship for the claimant. Other factors that may be considered include whether the overpayment was the result of a decision on appeal, and whether the claimant had notice from the agency that they may be required to repay an overpayment in the event of a reversal of the eligibility determination on appeal. *Id.*; *see also* UIPL No. 20-21(4)(d) (waiver guidance for overpayments of federal pandemic unemployment benefits).

Claimant was paid PEUC, FPUC, and LWA benefits before IWD determined claimant was ineligible for UI benefits. Claimant made no material misstatements or misrepresentations when filing for benefits. Claimant did not know or should not have known that they would be denied UI benefits at a later date. The overpayment was not a direct result of any knowing actions or omissions of the claimant. He made numerous telephone calls to try and confirm his eligibility for the benefits he was receiving, and it is difficult to imagine a claimant acting in a more proactive manner. As such, the payment of PEUC, FPUC, and LWA benefits was without fault on the part of the claimant. Further, based upon claimant’s financial circumstances, repayment of the overpayment would cause claimant a financial hardship.

Accordingly, claimant's repayment of the PEUC overpayment in the amount of \$11,200.00 shall be waived; claimant has no obligation to repay those PEUC benefits received. Claimant's repayment of the FPUC overpayment in the amount of \$5,400.00 shall be waived; claimant has no obligation to repay those FPUC benefits received. Claimant's repayment of the LWA overpayment in the amount of \$300.00 shall be waived; claimant has no obligation to repay those LWA benefits received.

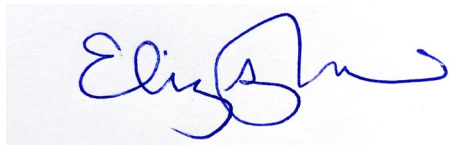
DECISION:

The May 30, 2023 (reference 05) unemployment insurance decision is reversed.

Claimant's PEUC overpayment in the amount of \$11,250.00 is waived. The claimant is not obligated to pay back any of the PEUC benefits received.

Claimant's FPUC overpayment in the amount of \$5,400.00 is waived. The claimant is not obligated to pay back any of the FPUC benefits received.

Claimant's LWA overpayment in the amount of \$300.00 is waived. The claimant is not obligated to pay back any of the LWA benefits received.



Elizabeth A. Johnson
Administrative Law Judge

June 30, 2023
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 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.