

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

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**KENNEDY CRAUN**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 23A-UI-01863-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (3)**

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PL 116-136, Sec. 2107 – Federal Pandemic Emergency Unemployment Compensation

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the February 8, 2023 (reference 02) unemployment insurance decision that found claimant was overpaid Pandemic Emergency Unemployment Compensation (PEUC) benefits and imposed an administrative penalty due to fraud. The parties were properly notified of the hearing. A telephone hearing was held on March 10, 2023. Claimant participated personally. Iowa Workforce Development (IWD) participated through Mike Newton, Investigator.

Department's Exhibits 1.1 through 1.6 were admitted. The administrative law judge took official notice of the administrative record. The record remained open for claimant to submit paystubs and tax forms from J and J Restaurants as proposed exhibits. Claimant did not submit paystubs. Claimant submitted her 2020 and 2021 W-2s which are admitted as Claimant's Exhibit A.

**ISSUES:**

Whether claimant was overpaid PEUC benefits.  
Whether a penalty was properly imposed.

**FINDINGS OF FACT:**

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

Claimant filed an initial claim for benefits effective March 22, 2020 and ongoing weekly claims from March 22, 2020 until April 3, 2021. Claimant's weekly benefit amount (WBA) was \$347.00. Claimant exhausted her Unemployment Insurance (UI) benefits during the benefit week ending September 5, 2020. In question are the benefit weeks between September 6, 2020 and March 20, 2021.

The following chart reflects the weeks that claimant filed ongoing weekly claims, the wages that claimant submitted on her weekly claims, the wages that employers reported claimant earned each week and the amount of PEUC benefits paid to claimant:

Benefit Week Ending	Wages Submitted by Claimant	Wages and Tips Reported by J and J	Wages Reported by UCSD	Total Wages Reported by Employers	PEUC Benefits Paid To Claimant
9/12/2020	\$30.00	\$236.93	\$281.75	\$755.61	\$347.00
9/19/2020	\$30.00	\$423.33	\$294.36	\$1,141.02	\$347.00
9/26/2020	\$30.00	\$423.33	\$344.41	\$1,191.07	\$347.00
10/3/2020	\$30.00	\$100.30	\$379.01	\$579.61	\$347.00
10/10/2020	\$25.00	\$100.30	\$195.48	\$396.08	\$347.00
10/17/2020	\$30.00	\$409.67	\$355.60	\$1,174.94	\$347.00
10/24/2020	\$30.00	\$409.67	\$347.64	\$1,166.98	\$347.00
10/31/2020	\$30.00	\$0.00	\$356.36	\$356.36	\$347.00
11/7/2020	\$20.00	\$164.04	\$182.21	\$510.29	\$347.00
11/14/2020	\$20.00	\$148.90	\$369.44	\$667.24	\$347.00
11/21/2020	\$30.00	\$115.80	\$335.31	\$566.91	\$347.00
11/28/2020	\$20.00	\$173.77	\$141.64	\$489.18	\$347.00
12/5/2020	\$30.00	\$181.01	\$268.48	\$630.50	
12/12/2020	\$40.00	\$175.06	\$278.91	\$629.03	\$347.00
12/19/2020	\$30.00	\$172.82	\$354.94	\$700.58	
12/26/2020	\$30.00	\$171.37	\$124.00	\$466.74	
1/2/2021	\$15.00	\$76.40	\$0.00	\$152.80	\$347.00
1/9/2021	\$30.00	\$321.53	\$122.30	\$765.36	\$347.00
1/16/2021	\$40.00	\$252.41	\$210.93	\$715.75	\$347.00
1/23/2021	\$50.00	\$295.83	\$202.78	\$794.44	\$347.00
1/30/2021	\$60.00	\$430.47	\$284.31	\$1,145.25	\$347.00
2/6/2021	\$100.00	\$374.42	\$194.06	\$942.90	\$333.00
2/13/2021	\$60.00	\$265.17	\$213.87	\$744.21	\$347.00
2/20/2021	\$20.00	\$227.64	\$140.97	\$596.25	\$347.00
2/27/2021	\$40.00	\$309.14	\$336.26	\$954.54	\$347.00
3/6/2021	\$60.00	\$224.86	\$263.26	\$712.98	\$347.00
3/13/2021	\$50.00	\$281.44	\$247.15	\$810.03	\$347.00
3/20/2021	\$30.00	\$213.04	\$0.00	\$426.08	\$347.00

(See Department Exhibits 1.3; 1.5 – 1.6; 1.8 – 1.9)

Claimant does not dispute the wages reported by UCSD. Claimant did not report her wages from UCSD on her weekly claims and offered no explanation for omitting them.

Claimant disputes the wages or tips reported by J and J. The gross wages on claimant's J and J W-2s are consistent with the wages employer reported to IWD quarterly for tax purposes. The gross wages on the W-2s are also more consistent with employer's response to the audit than the wages claimant reported on her weekly claims.

When the claim was initially filed, claimant agreed to read the Unemployment Insurance Handbook. The handbook instructs claimants on what to report on their weekly claims:

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.

The handbook provides further guidance on 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 if you have not yet received the payment. To calculate the amount to report, multiply the number of hours you worked by your hourly wage. . . .

The handbook alerts claimants to the consequences for providing false or fraudulent statements to collect benefits:

Fraud is knowingly providing false information or withholding information to receive UI benefits. Fraudulently collecting UI benefits is a serious offense. It can lead to severe penalties, which include:

- criminal prosecution, fines, and imprisonment
- An overpayment of fraudulently collected unemployment insurance benefits that you must repay, plus a fifteen percent misrepresentation penalty and daily interest . . .

IWD conducted an audit and discovered that claimant underreported her wages earned on weekly claims. On February 8, 2023, IWD issued a decision (reference 02) finding claimant was overpaid PEUC benefits of \$7,645.00 for 24 weeks between September 6, 2020 and March 20, 2021. In addition, IWD imposed a 15% penalty for misrepresentation.

#### **REASONING AND CONCLUSIONS OF LAW:**

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

PL 116-136 Sec 2107 provides in pertinent part:

PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION.

(a) FEDERAL-STATE AGREEMENTS. –

. . .

(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.

...

(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.

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

5. Other compensation.

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, this subparagraph shall only be applicable if the base period employer has made one hundred percent of the contribution to the plan.

b. Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", subparagraph (1), (2), or (3), were

paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service by the beneficiary with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual otherwise qualified from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

Iowa Code section 96.3(3) provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.1A, subsection 37, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Admin. Code r. 871-24.18 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.

For the weeks ending September 12, 2020 through October 3, 2020; October 17, 2020 through October 24, 2020; November 14, 2020 through November 21, 2020; December 5, 2020 through December 26, 2020; and January 9, 2021 through March 13, 2021, claimant earned more than \$362.00 (her weekly benefit amount of \$347.00 plus \$15.00). Therefore, claimant was not unemployed and was not eligible for benefits.

For the weeks ending October 10, 2020; October 31, 2020 through November 7, 2020; November 28, 2020; January 2, 2021; and March 20, 2021, claimant worked and earned less than \$362.00. Therefore, claimant was partially unemployed and was entitled to partial benefit payments according to the following formula:

$$\begin{aligned} & \$ (\text{wages}) - \$ (25\% \text{ of WBA}) = \$ (\text{wage deduction}) \\ & \$ (\text{WBA}) - \$ (\text{wage deduction}) = \$ (\text{partial weekly benefit amount}) \end{aligned}$$

The following chart reflects the benefits claimant received, the benefits claimant was entitled to and the resulting overpayment:

Benefit Week Ending	Benefits Paid to Claimant	Benefits Claimant was Entitled to	Over Payment
9/12/2020	\$347.00	\$0.00	\$347.00
9/19/2020	\$347.00	\$0.00	\$347.00
9/26/2020	\$347.00	\$0.00	\$347.00
10/3/2020	\$347.00	\$0.00	\$347.00
10/10/2020	\$347.00	\$138.00	\$209.00
10/17/2020	\$347.00	\$0.00	\$347.00
10/24/2020	\$347.00	\$0.00	\$347.00
10/31/2020	\$347.00	\$77.00	\$270.00
11/7/2020	\$347.00	\$87.00	\$260.00
11/14/2020	\$347.00	\$0.00	\$347.00
11/21/2020	\$347.00	\$0.00	\$347.00
11/28/2020	\$347.00	\$118.00	\$229.00
12/5/2020			
12/12/2020	\$347.00	\$0.00	\$347.00
12/19/2020			
12/26/2020			
1/2/2021	\$347.00	\$347.00	\$0.00
1/9/2021	\$347.00	\$0.00	\$347.00
1/16/2021	\$347.00	\$0.00	\$347.00
1/23/2021	\$347.00	\$0.00	\$347.00
1/30/2021	\$347.00	\$0.00	\$347.00
2/6/2021	\$333.00	\$0.00	\$333.00
2/13/2021	\$347.00	\$0.00	\$347.00
2/20/2021	\$347.00	\$0.00	\$347.00
2/27/2021	\$347.00	\$0.00	\$347.00
3/6/2021	\$347.00	\$0.00	\$347.00
3/13/2021	\$347.00	\$0.00	\$347.00
3/20/2021	\$347.00	\$220.00	\$127.00
		TOTAL:	\$7,674.00

Claimant was overpaid PEUC benefits in the amount of \$7,674.00. Claimant is required to repay those benefits.

The next issue to be determined is whether the imposition of a 15% penalty due to fraud is warranted. For the reasons that follow, the administrative law judge concludes:

PL 116-136 Sec 2107(e) provides in pertinent part (emphasis added):

(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.

The Department of Labor has provided the following guidance regarding penalties for fraud:

Within the context of the CARES Act, states must apply a minimum 15 percent monetary penalty to an individual's overpayment when the state determines that such an overpayment was made to an individual due to fraud. Fraud includes instances where an **individual knowingly made, or caused to be made, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact.** This fraud penalty is applicable to . . . PEUC . . . .

UIPL No. 20-21, pages 4-5 (emphasis added).

The Department of Labor further explains: "eligibility fraud occurs when benefits or services are acquired as a result of false information being provided with the intent to receive benefits for which an individual would not otherwise be eligible." UIPL No. 20-21, Change 1, page 7.

Claimant had a duty to truthfully and accurately answer questions when filing her weekly claim. Claimant did not report any wages earned with UCSD and significantly underreported her wages and tips earned with J and J. Claimant willfully and knowingly failed to disclose material facts to obtain unemployment benefits to which she was not entitled, which constitutes a fraudulent practice. The 15% administrative penalty was properly imposed.

**DECISION:**

The February 8, 2023 (reference 02) unemployment insurance decision is MODIFIED IN FAVOR OF RESPONDENT. Claimant was overpaid PEUC benefits in the amount of \$7,674.00, which must be repaid. A 15% administrative penalty for fraud shall be assessed.



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Adrienne C. Williamson  
Administrative Law Judge

March 27, 2023  
Decision Dated and Mailed

**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  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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.