

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

CARISSA MARSHALL
Claimant

APPEAL 24A-UI-02829-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

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

PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.16(4) – Offenses and Misrepresentation

STATEMENT OF THE CASE:

On March 11, 2024, claimant Carissa Marshall filed an appeal from the March 6, 2024 (reference 06) unemployment insurance decision that found Marshall was overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits and imposed an administrative penalty due to misrepresentation. A telephonic hearing was held at 10:00 a.m. on Tuesday, June 11, 2024. Appeal numbers 24A-UI-02828-LJ-T, 24A-UI-02829-LJ-T, 24A-UI-02830-LJ-T, and 24A-UI-05578-LJ-T were heard together and created one record. Carissa Marshall participated and was represented by attorney Gayla Harrison. Iowa Workforce Development (“IWD”) participated through investigator Debbie Rumbaugh and attorney Jeffrey Koncsol represented the agency.

IWD Exhibits 1, 2, 3, 4, 5, 6, 8, and 9 were received and admitted into the record without objection.¹ The administrative law judge took official notice of the administrative record to incorporate Marshall’s weekly claim records in DBRO and KCCO; to review Marshall’s base period wages in WAGE-A; to review the payments issued to Marshall as documented in KPY1 and KPYX; to review the NMRO system, documenting all of the decisions issued to Marshall during her March 22, 2020 claim year; and to review the Alfresco document repository to retrieve and read the April 21, 2022 (reference 01) and the April 21, 2022 (reference 02) unemployment insurance decisions and the appeal decision 23A-UI-06762-DZ-T.

ISSUES:

Whether Marshall was overpaid FPUC benefits.
Whether a penalty was properly imposed.

¹ IWD Exhibits 7, 10, and 11 were excluded from the record.

FINDINGS OF FACT:

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

Marshall filed an initial claim for benefits effective March 22, 2020. After opening her claim, she filed consecutive weekly claims from the week ending March 28, 2020 until the week ending August 1, 2020. Marshall then had a break in her reporting status. She resumed claiming benefits in November, establishing an additional claim date of November 22, 2020. Marshall filed consecutive weekly claims from the week ending November 28, 2020 until the week ending December 26, 2020. From the week ending April 4, 2020 through the week ending July 25, 2020, she received both regular unemployment (UI) and FPUC benefits each week.

On March 6, 2024, IWD issued a decision (reference 05) that found Marshall was overpaid \$9,527.00 in regular UI benefits from March 22, 2020 through May 23, 2023 because she failed to report wages earned with two employers. The investigator who issued that decision subsequently amended that decision, issuing the June 5, 2024 (reference 08) decision determining Marshall was overpaid \$9,527.00 in regular UI benefits from March 22, 2020 through December 26, 2020 because she failed to report wages earned with two employers. Both the initial and the amended decisions assessed an administrative penalty for fraud. The amended decision has been modified in favor of Marshall on appeal. (See appeal number 24A-UI-05578-LJ-T) The administrative law judge found that while she was overpaid UI benefits, Marshall did not willfully or knowingly misrepresent her wages earned when filing claims. (24A-UI-05578) The findings of that decision are incorporated into this decision by reference.

Marshall received one \$600.00 supplemental FPUC payment each week between the week ending April 4, 2020 and July 25, 2020. Between March 29, 2020 and July 25, 2020, Marshall received FPUC benefits in the gross amount of \$9,600.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Marshall has been overpaid FPUC benefits. The administrative law judge also concludes a penalty is not appropriate.

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, except that the State agency may waive such repayment if it determines that—

(A) the payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual; and

(B) such repayment would be contrary to equity and good conscience.

The decision that denied Marshall UI benefits remains in effect. As explained in more detail in 24A-UI-05578, Marshall did not monetarily qualify for benefits for any week of her claim. Therefore, because Marshall is not eligible for UI benefits, she is also not eligible for FPUC benefits. Therefore, administrative law judge concludes that Marshall has been overpaid FPUC benefits in the amount of \$9,600.00—the gross amount of FPUC benefits she received. Those benefits must be recovered in accordance with Iowa law.

The next issue is whether IWD properly imposed an administrative penalty due to fraud. For the reasons that follow, the administrative law judge concludes the penalty was not properly imposed.

PL 116-136 Sec 2104(f) provides in pertinent part:

EMERGENCY INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

(f) 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 Federal Pandemic Unemployment Compensation to which such individual was not entitled, such individual –

(A) 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

(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 . . . FPUC

UIPL No. 20-21, pages 4-5.

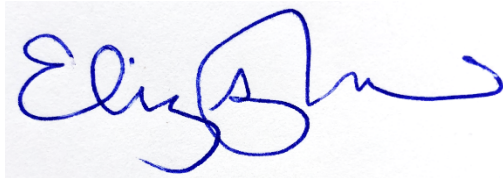
The Department of Labor further explains: “eligibility fraud occurs when benefits or services are acquired as a result of false information being provided ***with the intent to receive benefits for which an individual would not otherwise be eligible.***” UIPL No. 20-21, Change 1, page 7 (Emphasis added).

Marshall did not willfully or knowingly misreport wages earned on her weekly claims with any intent to defraud the agency. IWD did not prove Marshall intended to deceive IWD. Therefore, the 15% penalty due to fraud is not warranted.

DECISION:

The March 6, 2024 (reference 06) unemployment insurance decision is MODIFIED IN FAVOR OF APPELLANT. Claimant Carissa Marshall was overpaid FPUC benefits in the amount of \$9,600.00, which must be repaid.

IWD shall not impose any penalty for fraud or misrepresentation, as it has not established that claimant Carissa Marshall engaged in any fraud or misrepresentation.



Elizabeth A. Johnson
Administrative Law Judge

June 17, 2024
Decision Dated and Mailed

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NOTE TO CLAIMANT: This decision determines you have been overpaid benefits under the CARES Act. If you disagree with this decision, you may file an appeal by following the instructions below. Additionally, instructions for requesting a waiver of this overpayment can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.

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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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.