

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

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**BRITTANY HORKHEIMER**  
Claimant

**APPEAL 23A-UI-01875-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 04/19/20**  
**Claimant: Appellant (2)**

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PL 116-136, Sec. 2107(e) –Pandemic Emergency Unemployment Compensation Waiver

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the February 7, 2023 decision that denied claimant’s application to waive repayment of Pandemic Emergency Unemployment Compensation (PEUC), Federal Pandemic Unemployment Compensation (FPUC) and Lost Wage Assistance Program (LWAP) benefit overpayments. Claimant was properly notified of the hearing. A telephone hearing was held on March 24, 2023. Claimant participated with her attorney, Brian Peters. Iowa Workforce Development (IWD) did not participate. No exhibits were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant filed a timely appeal.

Whether repayment of claimant’s PEUC, FPUC and LWAP overpayments should be waived.

**FINDINGS OF FACT:**

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

On February 7, 2023, IWD issued a decision denying claimant’s request to waive repayment of her PEUC, FPUC and LWAP benefit overpayments. The stated reason for denial was that the overpayment was due to claimant not correctly reporting wages during filing weeks. The decision was mailed to claimant at the correct address on February 7, 2023. Claimant received the decision but does not recall the date of receipt. The decision states that it becomes final unless an appeal is postmarked or received by IWD Appeals Section by February 17, 2023. Claimant appealed the decision online on February 22, 2023. Claimant’s delay was due to IWD issuing two waiver denial decisions with different reasons for denial and different appeal deadlines.

Claimant filed an original claim for regular unemployment insurance benefits effective April 19, 2020 and ongoing weekly claims between April 19, 2020 and April 17, 2021.

On July 15, 2021, IWD issued a decision (reference 01) denying claimant benefits finding that claimant voluntarily quit her employment with United Clinical Laboratories on July 23, 2020 by failing to report to work for three consecutive shifts without notifying employer. The denial was upheld on appeal.

On March 22, 2022, IWD issued a decision (reference 04) finding claimant was overpaid PEUC benefits of \$9,594.00 for the 26-week period between October 18, 2020 and April 17, 2021. The PEUC overpayment was upheld on appeal. Claimant applied to waive repayment of the PEUC overpayment.

On March 22, 2022, IWD issued a decision (reference 06) finding claimant was overpaid FPUC benefits of \$4,800.00 for the 16-week period between December 27, 2020 and April 17, 2021. The FPUC overpayment was upheld on appeal. Claimant applied to waive repayment of the FPUC overpayment.

On March 22, 2022, IWD issued a decision (reference 05) finding claimant was overpaid LWA benefits of \$1,800.00 for the 6-week period between July 26, 2020 and September 5, 2020. The LWA overpayment was upheld on appeal. Claimant applied to waive repayment of the LWA overpayment.

Claimant received benefits because IWD chose to release benefits to claimants before making initial determinations regarding eligibility. Claimant provided all information she believed IWD needed to make its decision. Claimant was honest in her application for benefits and had no reason to believe that she was not entitled to them. Claimant applied for benefits in good faith and continued filing weekly claims upon the advice and at the direction of IWD.

Claimant used the benefits received to pay for necessary living expenses, including, food, shelter, utilities, and transportation. Claimant's currently monthly expenses typically exceed her monthly income. Claimant has a child to support. Claimant does not have money saved with which to repay the overpayment. Repayment would cause claimant a financial hardship.

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

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

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.”

Iowa Admin. Code r. 871-24.35(1)(c) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

- (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

Claimant did not appeal the decision until after the deadline. Claimant's delay was due to agency error or misinformation. Claimant's appeal is considered timely.

The next issues to be determined are whether claimant's repayment of her PEUC, FPUC and LWAP overpayments should be waived. For the reasons that follow, the administrative law judge concludes:

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.

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.

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 determining whether the payment of benefits was without fault on the part of the claimant, several factors must be considered. Those factors include whether a material statement or representation was made by the claimant in connection with the application for benefits and whether the claimant knew or should have known that the statement was inaccurate; whether the claimant failed or caused another to fail to disclose a material fact in connection with the application for benefits that resulted in the overpayment and whether the claimant knew or should have known that the fact was material; whether the claimant knew or could have been expected to know that they were not entitled to the compensation payment; and whether the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of

the claimant or of which the claimant had knowledge and which was erroneous or inaccurate or otherwise wrong. Cf. Iowa Admin. Code r. 871-24.50(7)(factors for waiver of temporary extended unemployment compensation).

In deciding whether repayment would be contrary to equity and good conscience, several factors must be considered. Those factors include whether repayment would cause financial hardship to the claimant; or, that the claimant (regardless of financial circumstances) can establish that they have relinquished a valuable right or changed positions for the worse; or, recovery would be unconscionable under the circumstances. See UIPL No. 20-21(4)d. Other factors include whether the overpayment was the result of a decision on appeal; whether the state agency had given notice to the claimant that they may be required to repay the overpayment in the event of a reversal of the eligibility determination on appeal; and whether recovery of the overpayment will cause financial hardship to the claimant. Cf. Iowa Admin. Code r. 871-24.50(7)(factors for waiver of temporary extended unemployment compensation).

Claimant was paid PEUC, FPUC and LWAP benefits before IWD determined claimant was ineligible for those 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 benefits at a later date. The overpayment was not a direct result of any knowing actions or omissions of the claimant. As such, the payment of PEUC, FPUC and LWAP 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 of \$9,594.00; FPUC overpayment of \$4,800.00; and LWAP overpayment of \$1,800.00 shall be waived; claimant has no obligation to repay those benefits received.

**DECISION:**

Claimant's appeal is timely. The February 7, 2023 decision denying claimant's application for waiver of repayment of PEUC, FPUC and LWAP overpayments is REVERSED. Claimant's PEUC, FPUC and LWAP overpayments outlined above are waived. Claimant is not obligated to pay back these benefits.



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Adrienne C. Williamson  
Administrative Law Judge

March 27, 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  
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 adquiera 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.