

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

SHANNON M SHEETS

Claimant

APPEAL 22A-UI-16613-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/15/20
Claimant: Appellant (4)**

Iowa Code § 96.3(7) – Overpayment of Benefits
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Admin. Code r. 871—25.1 – Misrepresentation & Fraud

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the August 19, 2022, (reference 03) unemployment insurance decision that found claimant was overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$13,500.00 for a 28-week period between March 29, 2020, and March 13, 2021, because claimant failed to report wages earned with Drake Diner LLC and Broadlawns Medical Center. Iowa Workforce Development (IWD) imposed a 15% administrative penalty due to misrepresentation. The parties were properly notified of the hearing. A telephone hearing was held on October 12, 2022. The claimant, Shannon M. Sheets, participated, and was represented by Attorney Marlon Mormann. Troy Shelley participated on behalf of IWD, and IWD was represented by Attorney Jeffrey Koncsol. Claimant's Exhibits 1 through 3 were admitted. IWD Exhibits A1 through A6, B1 through B8, and C1 through C5 were admitted. The administrative law judge took official notice of the administrative record. The hearing for the following appeal numbers was consolidated, which created one record: 22A-UI-16611-AR-T, 22A-UI-16612-AR-T, 22A-UI-16613-AR-T, 22A-UI-16614-AR-T, and 22A-UI-16615-AR-T.

ISSUES:

Did IWD correctly determine that claimant was overpaid FPUC benefits and was the overpayment amount correctly calculated?

Did IWD properly impose a penalty based on claimant's misrepresentation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed a claim for unemployment insurance benefits with an effective date of March 15, 2020. His weekly benefit amount was \$591.00 based on the wages reported in the base period. Claimant filed weekly continuing claims beginning the week of March 22, 2020, and continuing through the week that ended March 13, 2021. Claimant received regular unemployment insurance benefits funded by the State of Iowa in the gross amount of \$15,366.00 from March 22, 2020,

through October 31, 2020, when he exhausted his maximum benefit amount. Claimant also received Pandemic Emergency Unemployment Compensation (PEUC) benefits in the amount of \$8,661.00 for the 19-week period between November 1, 2020, and March 13, 2021. Claimant received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$13,500.00 for a 28-week period between March 29, 2020, and March 31, 2021. Claimant received Lost Wages Assistance Program (LWAP) benefits in the amount of \$1,800.00 for the six-week period between July 26, 2020, and September 5, 2020.

Throughout the period in which claimant was filing his claims for benefits, he was working for two employers: Drake Diner LLC and Broadlawns Medical Center. Claimant works weekends at Drake Diner, and his position at Broadlawns is full-time, with a regular work schedule of Monday through Friday. In March 2020, Drake Diner was affected by the COVID-19 pandemic and was forced to close for a period of time. It was at this time that claimant filed his claim for benefits, because his income decreased as the result of the restaurant's closure. Throughout the period in which claimant filed his claims for benefits, he maintained his full-time work with Broadlawns. When claimant filed his claims for benefits, he believed he was "filing against" Drake Diner. Accordingly, he did not report wages from Broadlawns, because he did not believe that he was "filing against" his full-time employer. When he began reporting wages, he reported his weekly wages, plus tips, as reflected by receipts received at the end of each shift, from Drake Diner. He called IWD at one point in March 2020 to inquire about how to properly file his claims, because he was concerned that Drake Diner only constituted supplemental income for him. He spoke with someone at IWD after waiting hours to do so, and they simply told him to file for benefits. It was not until April 1, 2021, when claimant called IWD to inquire why he was not receiving benefits that he was informed he had been reporting his wages improperly. After that call, he began reporting wages properly, and was no longer eligible for benefits, as a result.

IWD received a wage crossmatch for the first quarter of 2021 and determined that a wage audit was necessary. It requested wage records from both Drake Diner and Broadlawns Medical Center. The audit revealed that claimant had not been reporting all of his wages earned with both employers. The audit indicated that claimant was not eligible to receive any unemployment insurance benefits because his weekly wages exceeded his weekly benefit amount, plus \$15, for each week in which he filed claims for benefits. Shelley conducted the ensuing investigation. When he called claimant at the appointed time to speak about the audit, claimant stated that he wished to seek legal counsel, and declined to speak with Shelley further that day. Shelley informed him he would be issuing decisions based on the information at hand, which he did. He imposed the 15% administrative penalty because claimant was substantially underreporting wages over a long period of time. Shelley concluded this constituted misrepresentation.

The online handbook for claimants provides that "you must report all gross wages and all gross earnings on the weekly claim." It further states that "[w]ages are reported when earned, not when paid." Claimant did not read the handbook when he filed his claims for benefits. He did not know he needed to do so, nor did he recognize that he was certifying that he had read the handbook.

REASONING AND CONCLUSIONS OF LAW:

As a preliminary matter, claimant poses a number of arguments in his appeal and at hearing indicating he believes IWD is prevented from recovering the overpaid amount. These arguments must be addressed first.

Claimant first alleges that Iowa Code section 96.9(4)b imposes a two-year statute of limitations which IWD has exceeded, barring it from recovering the overpaid amount. Iowa Code section 96.9(4)b reads as follows:

Money requisitioned as provided in this subsection for the payment of expenses of administration shall be deposited in the employment security administration fund, but, until expended, shall remain a part of the unemployment compensation fund. The treasurer of state shall maintain a separate record of the deposit, obligation, expenditure, and return of the funds so deposited. . . .

That section contains no discussion of a statute of limitations other time-related limitations. The administrative law judge assumes claimant is referring to Iowa Code section 96.9(4)(a)(1)(b), instead. That section reads:

4. Money credited under section 903 of the Social Security Act.

a. (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act may not be requisitioned from this state's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this chapter. Such money may be requisitioned pursuant to subsection 3 of this section for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this chapter, but only pursuant to a specific appropriation by the legislature and only if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

. . .

(b) Limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law.

This section does not impose a time bar for IWD's attempts to recover money overpaid to claimants. The administrative law judge reads the statute to apply to IWD's obligation to spend the money issued to it under certain circumstances. The code section is inapplicable to the issue at hand.

Claimant further argues that the doctrines of laches and equitable estoppel apply and prevent IWD from recovering the overpaid funds. The administrative law judge concludes these arguments are similarly inapplicable.

The Iowa Supreme Court has held that both the doctrines of laches and equitable estoppel "cannot be asserted against the government to create liability to deny liability in contravention of statute." *Endress v. Iowa Dep't of Human Servs.*, 944 N.W.2d 71, 94 (Iowa 2020) (McDonald, J., concurring in part). As to the equitable estoppel argument, the Iowa Supreme Court has "consistently held equitable estoppel will not lie against a government agency except in exceptional circumstances." *ABC Disposal Sys., Inc. v. Dep't of Natural Res.*, 681 N.W.2d 596, 607 (Iowa 2004). Iowa Code section 96.3(7) explicitly provides for recoupment of unemployment insurance benefits. Public Law 116-136, section 2104(f)(2), which lays out eligibility for and repayment of FPUC benefits also states, "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 . . . to the State agency[.]” Accordingly, claimant’s arguments against recoupment are inapplicable.

For the reasons that follow, the administrative law judge concludes IWD correctly calculated the claimant’s overpayment of FPUC benefits, but the 15% administrative penalty was not properly imposed.

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

Payment — determination — duration — child support intercept.

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. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department’s request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual’s separation from employment.

It is undisputed that the claimant earned weekly gross wages in excess of his weekly benefit amount, plus \$15.00, each week due to wages earned with Drake Diner and Broadlawns. These earnings were reportable for the purposes of deductibility from unemployment insurance benefits; however, the claimant failed to report wages earned with Broadlawns.

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 deductions 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.

This rule is intended to implement Iowa Code sections 96.3, 96.4 and 96.1A(37).

Public Law 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. 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 203 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. On March 11, 2021, the President signed the American Rescue Plan Act of 2021 (ARPA). 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. 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 FPUC benefits in Iowa was the week ending June 12, 2021.

Public Law 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...

If claimant would have properly reported his wages from Broadlawns, he would not have been eligible to receive state-funded unemployment insurance benefits or PEUC benefits for the weeks in which he filed his weekly continuing claims for benefits because his gross wages exceeded his weekly benefit amount, plus \$15.00 each week. Because the claimant was not eligible for regular unemployment insurance benefits or PEUC benefits, he is also ineligible to receive the supplemental FPUC benefits for those weeks. As such, the amount of overpayment of FPUC benefits as determined by IWD—\$13,500.00—is correct.

The next issue is whether the claimant engaged in fraud or misrepresentation when he failed to report correct earnings specifically from Broadlawns.

The Department is authorized to impose an administrative penalty when it determines that a claimant has within the thirty-six preceding calendar months, **willfully and knowing** failed to disclose a material fact with the intent to obtain unemployment benefits to which the individual is not entitled. Iowa Code § 96.5(8) (emphasis added).

Iowa Code section 96.16(1) provides (emphasis added):

Penalties. An individual who makes a false statement or representation **knowing** it to be false or **knowingly** fails to disclose a material fact, to obtain or increase any benefit or other payment under this chapter, either for the individual or for any other individual, is guilty of a fraudulent practice as defined in sections 714.8 to 714.14.

Iowa Code section 96.16(4)(a) and (b) provides in pertinent part:

4. Misrepresentation.
 - a. An individual who, by reason of the nondisclosure or misrepresentation by the individual or by another of a material fact, has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in the individual's case, or while the individual was disqualified from receiving benefits, shall, in the discretion of the department, either be liable to have the sum deducted from any future benefits payable to the individual under this chapter or shall be liable to repay to the department for the unemployment compensation fund, a sum equal to the amount so received by the individual.
 - b. The department shall assess a penalty equal to fifteen percent of the amount of a fraudulent overpayment. The penalty shall be collected in the same manner as the overpayment. The penalty shall be added to the amount of any lien filed pursuant to paragraph “a” and shall not be deducted from any future benefits payable to the individual under this chapter. Funds received for overpayment penalties shall be deposited in the unemployment trust fund.

Iowa Admin. Code r. 871—25.1 provides the following definition of “fraud” (emphasis added):

[T]he intentional misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself or another or to avoid the verification and payment of employment security taxes; a false representation of a matter of fact, whether by statement or by conduct, by false or misleading statements or allegations; or by the concealment or failure to disclose that which should have been disclosed,

which deceives and **is intended to deceive** another so that they, or the department, shall not act upon it to their, or its, legal injury.

Public Law 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.

UIPL No. 20-21 issued on May 5, 2021, provides that “[w]ithin 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”. See Page 4. “Fraud includes instances where 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.” *Id.* page 4–5; see *also* Section 251(a) of the Trade Adjustment Assistance Extension Act of 2011 (TAAEA) (Pub. L. 112-40).

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 . . . PEUC

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.

Claimant’s Exhibit 1 is compelling in demonstrating that claimant did not know that he should have been reporting *all* weekly wages, whether from his full-time employer or his part-time employer that was impacted by COVID-19. Claimant credibly testified that he believed he was claiming unemployment “against” a certain employer—Drake Diner—and that he was reporting

wages accurately. The evidence supports claimant's assertion that he was reporting his wages from Drake Diner accurately. IWD has not demonstrated that claimant acted with intent to deceive. Notwithstanding the instructions in the handbook, claimant did not willfully or knowingly misreport wages earned on their weekly claims. There is no evidence claimant intended to deceive IWD. Therefore, the 15% penalty due to fraud is not warranted.

DECISION:

The August 19, 2022, (reference 03) unemployment insurance decision is MODIFIED IN FAVOR OF THE APPELLANT. Claimant was overpaid FPUC benefits in the amount of \$13,500.00, which must be repaid. No administrative penalty for fraud shall be applied to the overpayment.



Alexis D. Rowe
Administrative Law Judge

October 19, 2022
Decision Dated and Mailed

ar/mh

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:

**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.