

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

CHRISTOPHER L. HANSON
Claimant

APPEAL 22A-UI-17955-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 12/06/20
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On September 20, 2022, the claimant/appellant filed an appeal from the September 16, 2022 (reference 04) Iowa Workforce Development (“IWD”) unemployment insurance decision that found claimant was overpaid FPUC benefits in the amount of \$2,700.00 for nine weeks between December 27, 2020, and February 27, 2022 because of the decision that found claimant was not able and available for work and was not eligible for benefits. IWD imposed a 15% administrative penalty due to misrepresentation. The parties were properly notified of the hearing. A telephone hearing was held on November 3, 2022. This hearing was consolidated with Appeals 22A-UI-17952-CS-T; 22A-UI-17953-CS-T; 22A-UI-17954-CS-T; and 22A-UI-18373-CS-T. Claimant participated. Iowa Workforce Development participated through investigator Seth Jones. Exhibits 1 and 2 were admitted into the record. Administrative notice was taken of claimant’s unemployment insurance benefits records.

ISSUES:

- I. Did IWD correctly determine that claimant was overpaid FPUC benefits and was the overpayment amount correctly calculated?
- II. Did IWD properly impose a penalty based upon claimant’s misrepresentation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A claim was originally filed under the name of Charles Corey L. Nelson with an effective date of December 6, 2020 using claimant's social security number. (DBRO, DBIN). The claim was later updated to change the name to claimant's name. (DBRO). The original claim listed the address for claimant as 7005 Palm Dr. Urbandale, Iowa 50322. (DBIN). Claimant has never lived at the residence. The claim also noted the last employer for claimant was Mirranda O'Donnell as a dog trainer. Claimant denies working for Ms. O'Donnell. Wage A does not reflect claimant working for Ms. O'Donnell.

Investigator Jones discovered a claim was filed for Mirranda O'Donnell using the same residence of 7005 Palm Dr., Urbandale, Iowa 50322. Claimant does not know Ms. O'Donnell.

Beginning October 1, 2020, claimant was incarcerated. On December 6, 2020, when this claim was filed, claimant was incarcerated at the Polk County Jail in Des Moines, Iowa. Claimant did not have access to the internet. Claimant denies filing for benefits, given his information to a person to file for benefits, or requesting a person to file for benefits on his behalf.

Investigator Jones was not able to pin point a location for the IP address used to file the claim, however, he was able to note that 23 other claims were filed using the same IP address. Investigator Jones was able to determine that seven of twelve weekly claims filed for claimant were also filed within minutes of Ms. O'Donnell filing her weekly claim. Investigator Jones attempted to contact Ms. O'Donnell and discovered Ms. O'Donnell is also incarcerated.

The weekly benefit amount for the claim was \$311.00. (DBRO). The claim was first paid beginning December 6, 2020, and continued each week thereafter until February 20, 2021. (DBRO, KPY1). IWD paid gross total of \$3,116.43 in state unemployment insurance benefits for the unemployment insurance claim filed in claimant's name. (DBRO). Claimant's state unemployment claim was exhausted.

Beginning on February 21, 2021, Pandemic Emergency Unemployment Compensation (PEUC) was paid on the claim. The weekly benefit amount was \$311.00. A gross total of \$311.00 in PEUC benefits was paid for the claim beginning February 21, 2021, through February 27, 2021.

Beginning December 27, 2020, weekly Federal Pandemic Unemployment Compensation (FPUC) benefits were paid on the claim through February 27, 2021. The weekly FPUC benefit amount was \$300.00. A gross total of \$2,700.00 in FPUC benefits was paid on the claim.

The unemployment benefits went on a debit card issued by IWD for unemployment benefits. Investigator Jones was not able to show claimant received the benefits or that claimant had knowledge of the benefits being issued on his behalf.

IWD imposed the 15% administrative penalty due to the claim being filed while claimant was in jail.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes IWD incorrectly determined claimant was overpaid FPUC benefits. The 15% penalty due to misrepresentation was improperly 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.

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.

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. 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.

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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses, considering the applicable factors listed above, and using her own common sense and experience, the Administrative Law Judge finds that claimant's testimony credible. Claimant credibly testified that he did not file for benefits with an effective date of December 6, 2020. Claimant was incarcerated in the Polk County jail without access to the internet. There was no evidence presented that claimant received the benefits or someone on his behalf received the benefits. The evidence shows that someone filed for benefits using claimant's social security number with the incorrect name and an address not associated with claimant. Eventually the name was corrected and the benefits were paid onto a debit card that was issued through IWD. There was no evidence claimant gave his personal information so someone could file a claim to receive benefits. There was no evidence claimant received the benefits. As a result, IWD has not established that claimant was overpaid FPUC benefits.

There is no evidence that claimant knowingly made any false representations of a matter of fact to IWD. IWD has not met its burden of proof establishing that claimant fraudulently filed for benefits or that he actually received the benefits. As a result, the administrative penalty was incorrectly imposed.

DECISION:

The September 16, 2022, (reference 04) unemployment insurance decision is REVERSED. The claimant was not overpaid \$2,700.00 in FPUC benefits for 9 week between December 27, 2020, and February 27, 2021. IWD incorrectly imposed the administrative penalty. The 15% administrative penalty imposed shall be removed.



Carly Smith
Administrative Law Judge

November 14, 2022
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 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.