

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRISTA E ANDERSEN
Claimant

APPEAL 22A-UI-10504-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/22/20
Claimant: Appellant (1)

PL 116-136, Sec. 2107 – Federal Pandemic Emergency Unemployment Compensation
PL 116-136, Sec. 2104(f)(2) –Federal Pandemic Unemployment Compensation
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment – Lost Wages Assistance Program
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 11, 2022, (reference 06) unemployment insurance decision that determined claimant was overpaid Pandemic Emergency Unemployment Compensation (PEUC) benefits in the amount of \$3,562.00, Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$10,200.00, and Lost Wages Assistance Program (LWAP) benefits in the amount of \$1,800.00. After due notice was issued, a telephone hearing was held on May 11, 2022, and was held together with the hearing for appeal numbers 22A-UI-10500-AR-T and 22A-UI-10501-AR-T. The claimant, Krista E. Andersen, participated personally. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant's appeal timely?
Is the claimant overpaid PEUC, FPUC, and LWAP benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An overpayment decision was mailed to claimant's last known address of record on April 11, 2022. She did receive the decision shortly after it was mailed. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau within 10 days, but it did not provide a date by which claimant needed to submit her appeal. The appeal was not filed until April 25, 2022, which is after the expiration of the 10-day deadline. Claimant attempted to file an appeal by April 22, 2022. She attempted to use the online system, but for an unknown reason, could not get the system to accept her appeal. It returned a message regarding the date multiple times. Claimant tried to submit her appeal online again on April 23, 2022, but had the same issue. Finally, on April 24, 2022, she prepared a typed appeal to mail via US Postal Service. She submitted her appeal on Monday, April 25, 2022.

Claimant filed for and has received PEUC benefits in the gross amount of \$3,562.00 for the 14-week period ending November 14, 2020. Claimant filed for and has received FPUC benefits in the gross amount of \$10,200.00 for the 17-week period ending July 25, 2020. Claimant filed for and received LWAP payments in the gross amount of \$1,800.00 for the six-week period ending September 5, 2020. On February 25, 2021, Iowa Workforce Development (IWD) issued a decision (reference 03) that disqualified claimant from receiving regular unemployment insurance benefits. That decision has been affirmed. See 22A-UI-10500-AR-T.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes claimant has been overpaid benefits for the period in question.

The first issue to be considered in this appeal is whether the appeal is timely. The administrative law judge determines it is.

Iowa Code section 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) 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:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(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.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

The appellant filed an appeal in a timely manner, but it was not received. Immediately upon receipt of information to that effect, a second appeal was filed. Therefore, the appeal shall be accepted as timely.

Claimant has been overpaid PEUC benefits.

Public Law 116-136, Sec. 2107 provides in pertinent part:

PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION.

(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.

The decision that denied claimant regular unemployment insurance benefits remains in effect. Because claimant is not eligible for UI benefits, claimant is not eligible for PEUC benefits. Therefore, claimant has received PEUC benefits to which they were not entitled. The administrative law judge concludes that claimant has been overpaid PEUC benefits in the amount outlined in the findings of fact above. Claimant is obligated to repay the PEUC benefits unless repayment of this obligation is waived. Instructions on how to apply for a waiver are found below.

Claimant was overpaid FPUC benefits for the period in question.

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...

Section 203 of the Continued Assistance for Unemployed Workers Act of 2020 provides in pertinent part:

(a) IN GENERAL. – Section 2104(e) of the CARES Act (15 U.S.C. 9023(e)) is amended to read as follows: . . .

“(e) APPLICABILITY. – An agreement entered into under this section shall apply –

(1) to weeks of unemployment beginning after the date on which such agreement is entered into and ending on or before July 31, 2020; and

(2) to weeks of unemployment beginning after December 26, 2020 (or, if later, the date on which such agreement is entered into), and ending on or before March 14, 2021.”.

(b) AMOUNT.-

(1) IN GENERAL. – Section 2104(b) of the CARES Act (15 U.S.C. 9023(b)) is amended –

(A) in paragraph (1)(B), by striking “of \$600” and inserting “equal to the amount specified in paragraph (3)”; and

(B) by adding at the end of the following new paragraph:

“(3) AMOUNT OF FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION.-

“(A) IN GENERAL. – The amount specified in this paragraph is the following amount:

“(i) For weeks of unemployment beginning after the date on which an agreement is entered into under this section and ending on or before July 31, 2020, \$600.

“(ii) For weeks of unemployment beginning after December 26, 2020 (or, if later, the date on which such agreement is entered into), and ending on or before March 14, 2021, \$300.”.

The decision that denied claimant regular unemployment insurance benefits remains in effect. Because claimant is not eligible for UI benefits, claimant is also not eligible for FPUC benefits. Therefore, claimant has received FPUC benefits to which they were not entitled. The administrative law judge concludes that claimant has been overpaid FPUC benefits in the amount outlined in the findings of fact above. Claimant is obligated to repay the FPUC benefits unless repayment of this obligation is waived. Instructions on how to apply for a waiver are found below.

Claimant has been overpaid LWAP benefits.

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

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 administrative law judge concludes that the claimant has been overpaid LWAP benefits in the amount of \$1,800.00. That amount must be repaid to the agency unless repayment of this obligation is waived.

DECISION:

The April 11, 2022, (reference 06) unemployment insurance decision is affirmed. Claimant's appeal is accepted as timely. Claimant has been overpaid PEUC, FPUC, and LWAP benefits in the amounts enumerated above, which must be repaid.



Alexis D. Rowe
Administrative Law Judge

June 8, 2022
Decision Dated and Mailed

ar/scn

NOTE TO CLAIMANT:

- This decision determines you have been overpaid PEUC, FPUC, and LWAP benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- You may also request a waiver of this overpayment. The written request must include the following information:
 1. Claimant name & address.
 2. Decision number/date of decision.
 3. Dollar amount of overpayment requested for waiver.
 4. Relevant facts that you feel would justify a waiver.
- The request should be sent to:

Iowa Workforce Development
Overpayment waiver request
1000 East Grand Avenue
Des Moines, IA 50319
- This Information can also be found on the Iowa Workforce Development website 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.