

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

**NANCY S CLARK**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 22A-UI-18119-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/03/20**  
**Claimant: Appellant (3)**

Public Law 116-136, sec. 2104 – Federal Pandemic Emergency Unemployment Compensation  
Iowa Code § 96.16(4) – Offenses and Misrepresentation  
Iowa Admin. Code r. 871-25.1 – Misrepresentation & Fraud  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On October 13, 2022, claimant Nancy S. Clark filed an appeal from the September 26, 2022 (reference 04) unemployment insurance decision that found she was overpaid \$3,600.00 in Federal Pandemic Unemployment Compensation (“FPUC”) benefits for the period of December 27, 2020 through April 10, 2021 and imposed a penalty for misrepresentation. The parties were properly notified of the hearing. A telephonic hearing was held at 9:00 a.m. on Thursday, January 12, 2023. Appeal numbers 22A-UI-18116-LJ-T, 22A-UI-18117-LJ-T, 22A-UI-18118-LJ-T, 22A-UI-18119-LJ-T, and 22A-UI-18120-LJ-T were heard together and created one record. The claimant, Nancy S. Clark, participated and was represented by attorney Marlon Mormann. Iowa Workforce Development participated through witnesses Debbie Rumbaugh, Investigator 2; and Daniel Noonan, Workforce Program Coordinator; and was represented by attorney Jeffrey Koncsol. Claimant’s Exhibits A through G and Department’s Exhibits 1-1 through 9-5 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Whether the appeal is timely. Whether there is good cause to treat the appeal as timely.  
Whether claimant was overpaid FPUC benefits.  
Whether a penalty was properly imposed.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an initial claim for benefits effective May 3, 2020, after separating from employment with Mercy Hospital. Claimant’s weekly benefit amount (WBA) throughout her claim year was \$500.00. She filed weekly continued claims for benefits between May 3, 2020 and April 10, 2021. In connection with these weekly claims, claimant received FPUC benefits in the gross amount of \$4,500.00 for the fifteen-week period between December 26, 2020 and April 10, 2021.

On September 26, 2022, IWD issued a decision (reference 02) that found claimant was overpaid federal Pandemic Emergency Unemployment Compensation ("PEUC") benefits based upon a failure to report her earnings while filing weekly claims and assessed an administrative penalty for fraud.<sup>1</sup> On appeal, an administrative law judge determined that claimant was overpaid PEUC benefits, which must be repaid. The administrative law judge further found that claimant willfully or knowingly misreported wages earned on weekly claims; those findings are incorporated herein by reference. (See appeal 22A-UI-18116-LJ-T). The administrative law judge's decision remains in effect.

On September 26, 2022, IWD issued a decision (reference 04) finding claimant was overpaid FPUC benefits in the amount of \$3,600.00 for the twelve-week period between December 27, 2020 and April 3, 2021 due to incorrectly reported wages earned with Abbe Center for Community Mental Health. In addition, IWD imposed a 15% administrative penalty for fraud because of what Rumbaugh concluded was deliberate under-reporting of income. (Department Exhibit 7-2)

Claimant objects to the imposition of the administrative penalty. Claimant testified that she was going through significant personal turmoil during her claim year, and that affected her state of mind. She also submitted statements from multiple individuals, including family, friends, and former employers, in support of this claim. (Claimant's Exhibits B, C, D, and E) Claimant denies intent to defraud Iowa Workforce Development.

The five unemployment insurance decisions were all mailed to the claimant's last-known address of record in Fairfield, Iowa on September 26, 2022. The claimant did not receive the decisions immediately, as she had moved to Oskaloosa, Iowa. The decisions were all forwarded by the U.S. Postal Service, and she received them in the mail on October 13, 2022. Claimant immediately took the decisions to her attorney, and her attorney immediately helped her file an appeal.

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

For the reasons that follow, the administrative law judge concludes the claimant was overpaid FPUC benefits in the amount of \$4,500.00 for the fifteen weeks between December 27, 2020 and April 10, 2021 and engaged in intentional misrepresentation during the weeks between November 29, 2020 and April 10, 2021. The 15% administrative penalty was properly imposed.

The first issue is whether the claimant filed a timely appeal. I believe the evidence in the record shows that claimant's appeal should be accepted as timely filed. 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) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information

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<sup>1</sup> When calculating claimant's overpayment of FPUC benefits received in connection with her PEUC benefits, IWD did not include the FPUC benefits paid for the weeks ending January 9, 2021; January 16, 2021; or April 10, 2021.

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. IDJS*, 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. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

The record shows that the claimant did not have a reasonable opportunity to file a timely appeal. The claimant last had an active claim for benefits with IWD in July 2022, and the address she had on file with the agency was correct as of the last week she filed for benefits, the week ending July 9, 2022. Claimant's failure to provide an address change to IWD when she moved at the end of August 2022 was not unreasonable. Moreover, the decisions issued to claimant were regarding her claim year effective May 3, 2020, and relate to weekly claims she last filed in April 2021. Claimant could not have reasonably expected overpayment decisions to take 17 months to calculate and process from IWD. This delay was prompted by and perpetuated by the agency. See Iowa Admin. Code r. 871-24.35(2). Therefore, I find good cause to treat claimant's appeal as timely filed.

The next issue presented is whether claimant has been overpaid FPUC benefits. 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 Continued Assistance for Unemployed Workers Act of 2020 modified the FPUC weekly benefit to \$300.00. PL 116-260; see UIPL 15-20, Change 3, page 1.

The decision that denied claimant PEUC benefits remains in effect. Because claimant is not eligible for PEUC benefits, claimant is also not eligible for FPUC benefits. Therefore, claimant has received FPUC benefits to which claimant was not entitled. I conclude claimant has been overpaid FPUC benefits in the amount outlined in the findings of fact above. Those benefits must be recovered in accordance with Iowa law.

The next issue to be determined is whether the imposition of an administrative penalty due to fraud was proper. 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.

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 section 96.5(8).

Iowa Code section 96.16(1) provides:

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) provide 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":

[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.

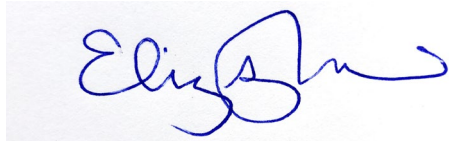
Iowa Admin. Code r. 871- 25.1 defines "misrepresentation" as "to give misleading or deceiving information to or omit material information; to present or represent in a manner at odds with the truth."

I find claimant has engaged in a pattern of misrepresentation beginning November 15, 2020 when filing her weekly continued claims for benefits, giving deceiving information and omitting a portion of her gross wages to increase her benefits. The evidence in the record shows that the week she began working for the Abbe Center, she accurately reported her gross wages earned. That week, she received no benefits. Over the next several weeks, she began slowly reducing the amount of wages she reported to IWD each week, and correspondingly the amount of benefits she received each week increased. Claimant's assertion that she was merely confused and reported the amount of taxes withheld from her paycheck is undercut by the hard numerical evidence. If claimant was looking at the amount of taxes withheld from her check each time she filed her weekly continued claim, then her "wages reported" would fluctuate more dramatically, and at different times, than in the same \$5.00 up-and-down increment every week or two.

Therefore, I conclude claimant was overpaid \$4,500.00 in FPUC benefits through a knowing and intentional omission of material information when claimant failed to correctly report wages earned for the period of November 29, 2020 through April 10, 2021 and concurrently filed weekly claims for unemployment insurance benefits. Accordingly, the application of a 15% penalty due to misrepresentation was warranted.

**DECISION:**

The September 26, 2022 (reference 04) unemployment insurance decision is modified in favor of Iowa Workforce Development. Claimant was overpaid \$4,500.00 in FPUC benefits for the weeks between November 29, 2020 and April 10, 2021. IWD correctly imposed the administrative penalty due to the claimant's misrepresentation during those weeks.



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Elizabeth A. Johnson  
Administrative Law Judge

January 31, 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](http://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.