

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

CINDI R FAIRBANKS
Claimant

APPEAL 22A-UI-17438-S2-T
ADMINISTRATIVE LAW JUDGE
DECISION

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 12/08/19
Claimant: Appellant (1)

Iowa Code § 96.3-7 - Recovery of Overpayment of regular and Lost Wages Assistance Benefits
PL116-136, Sec. 2104 – Overpayment of Federal Pandemic Unemployment Compensation
PL 116-136, Sec. 2107 – Federal Pandemic Emergency Unemployment Compensation
P.L. 110-252, §4005, 20 CFR 615 & Iowa Code § 96.29 – Extended Benefits Overpayment

STATEMENT OF THE CASE:

Claimant Cindi R. Fairbanks appealed a representative's decision dated September 7, 2022 (reference 04), that concluded the claimant was overpaid regular state unemployment insurance benefits, State Extended Benefits (EB), Pandemic Emergency Unemployment Compensation (PEUC), Federal Pandemic Unemployment Compensation (FPUC), and Lost Wages Assistance Program (LWAP) benefits as a result of a disqualification decision. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on October 13, 2022, and was consolidated with the hearing for appeal 22A-EUC-00014-S2-T. The claimant participated personally. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant overpaid unemployment insurance benefits?
Is the claimant overpaid extended benefits?
Is the claimant overpaid PEUC benefits?
Is the claimant overpaid FPUC benefits?
Is the claimant overpaid LWAP benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On November 25, 2020, Iowa Workforce Development (IWD) issued a decision (reference 03) that denied claimant regular state unemployment insurance (UI) benefits. That decision has been affirmed. See 22A-EUCU-00014-S2-T. Claimant has received regular state unemployment insurance benefits in the gross amount of \$846.63 for the three-week period ending March 28, 2020. Claimant has received \$2,379.82 in EB for the eight-week period ending September 12, 2020. Claimant has received PEUC benefits in the gross amount of \$3,913.00 for the thirteen-week period ending June 7, 2020. Claimant has received FPUC benefits in the gross amount of

\$8,400.00 for the fourteen-week period ending July 25, 2020. Claimant has received LWAP benefits in the gross amount of \$1,800.00 for the six-week period ending September 5, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant was overpaid regular state unemployment insurance, EB, PEUC, FPUC, and LWAP benefits for the period in question.

Iowa Code § 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.

PL 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.

PL116-136, 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...

Regarding overpaid Extended Benefits, Public Law 110-252, §4005 provides, in pertinent part, as follows:

(b) REPAYMENT.—In the case of individuals who have received amounts of emergency unemployment compensation under this title to which they were not entitled, the State shall require such individuals to repay the amounts of such emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that— (1) the payment of such emergency unemployment compensation was without fault on the part of any such individual; and

(2) such repayment would be contrary to equity and good conscience.

(c) RECOVERY BY STATE AGENCY.—

(1) IN GENERAL.—The State agency may recover the amount to be repaid, or any part thereof, by deductions from any emergency unemployment compensation payable to such individual under this title or from any

unemployment compensation payable to such individual under any State or Federal unemployment compensation law administered by the State agency or under any other State or Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the emergency unemployment compensation to which they were not entitled, except that no single deduction may exceed 50 percent of the weekly benefit amount from which such deduction is made.

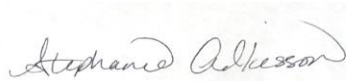
(2) OPPORTUNITY FOR HEARING.—No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(d) REVIEW.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

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 EB, PEUC, FPUC, and LWAP benefits. Therefore, claimant has received regular state unemployment insurance, EB, PEUC, FPUC, and LWAP benefits to which she was not entitled. The administrative law judge concludes that claimant has been overpaid regular state unemployment insurance, EB, PEUC, FPUC, and LWAP benefits in the amount outlined in the findings of fact above. Those benefits must be recovered in accordance with Iowa law.

DECISION:

The decision of the representative dated September 7, 2022, (reference 04) is affirmed. Claimant has been overpaid regular state unemployment insurance benefits in the amount of \$846.63. Claimant has been overpaid state extended benefits in the amount of \$2,379.82. Claimant has been overpaid PEUC benefits in the amount of \$3,913.00. Claimant has been overpaid FPUC benefits in the amount of \$8,400.00. Claimant has been overpaid LWAP benefits in the amount of \$1,800.00. The claimant must repay the overpaid regular state unemployment insurance benefits. Claimant must repay the overpaid EB, PEUC benefits, FPUC benefits and LWAP benefits unless she applies for and is granted waiver of repayment. See below.



Stephanie Adkisson
Administrative Law Judge

October 19, 2022
Decision Dated and Mailed

mh

NOTE TO CLAIMANT:

- This decision determines you have been overpaid EB, PEUC, FPUC, and LWAP benefits. If you disagree with this decision, you may file an appeal.
- 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.

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.