

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

DALIA MUSA
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 22A-UI-10595-DB

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20
Claimant: Appellant (4R)

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

STATEMENT OF THE CASE:

The claimant/appellant, Dalia Musa, filed a timely appeal from the April 11, 2022 (reference 05) Iowa Workforce Development (IWD) unemployment insurance decision which concluded she was overpaid FPUC benefits for ten weeks between July 19, 2020 and February 27, 2021 due to her failure to report wages earned with Smartscripts LLC. An administrative penalty of 15% was issued due to fraud. The parties were properly notified of the hearing. An in-person hearing was held on September 1, 2022 in Des Moines, Iowa. The claimant participated personally and was represented by Daphney Daniel. Language Link provided language interpretation services to the claimant. IWD participated through witness Seth Jones and was represented by Jeffrey Koncsol. Liz Vondracek testified as a witness. IWD Exhibits 1 through 4 were admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 22A-UI-10592-DB; 22A-UI-10594-DB; 22A-UI-10599-DB; and 22A-UI-10600-DB.

ISSUES:

Was the claimant overpaid FPUC benefits?
Did IWD properly impose a 15% penalty due to fraud?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed an original claim for unemployment insurance benefits with an effective date of May 3, 2020. Claimant's native language is Arabic. Claimant understands and reads some English language.

Claimant had been separated from employment with Walgreen Pharmacy Services MidW (Walgreen) on April 19, 2020. This separation from employment is what caused her to file for unemployment insurance benefits. Her weekly benefit amount established based upon her base period wages was \$211.00. Her maximum benefit amount for regular unemployment insurance benefits funded by the State of Iowa was \$4,905.27.

Claimant filed weekly continued claims for benefits from May 3, 2020 through January 2, 2021. She was not paid unemployment insurance benefits funded by the State of Iowa beginning May 3, 2020 because a denial decision had been issued on July 28, 2020 (reference 01) regarding her separation from employment and another decision was issued on July 27, 2020 (reference 02) regarding her availability and job status with Walgreen. See Appeals No. 22A-UI-09460-DG-T and 22A-UI-09462-DG-T.

Claimant filed appeals to the denial decisions (reference 01 and 02) and Administrative Law Judge (ALJ) Golden issued decisions on September 28, 2020 finding that the separation from employment was not disqualifying and that the claimant was able to and available for work. ALJ Golden's decisions allowed benefits effective May 3, 2020 and continuing provided the claimant met all other requirements.

Even though ALJ Golden's decisions allowed benefits effective May 3, 2020, regular unemployment insurance benefits did not begin paying out to the claimant until July 19, 2020 when her first week of regular State of Iowa benefits were paid. Claimant's administrative records do not indicate any prior locks on the account prior to July 19, 2020 that were not resolved with the issuance of ALJ Golden's decisions and it is unknown why IWD did not pay benefits to the claimant beginning May 3, 2020.

When the claimant initially began filing for unemployment benefits in May of 2020, she had already been employed beginning January 13, 2020 with Smartscripts LLC as a part-time pharmacy technician. She moved to full-time status with Smartscripts LLC on August 9, 2020. Smartscripts LLC considers "full-time" status of an employee to be approximately 30 hours per week. Her last day of employment with Smartscripts LLC was January 14, 2022.

Between July 19, 2020 and February 27, 2021, the claimant's hours worked per week fluctuated from 16 to 33.80. See Exhibit 2. Claimant earned \$15.25 per hour with Smartscripts LLC at her date of hire through December 26, 2020, then her hourly wage was increased to \$15.71. See Exhibit 2. For each of the weeks of July 19, 2020 through January 2, 2021, the claimant had gross earnings in excess of her weekly benefit amount (\$211.00) plus \$15.00. See Exhibit 2. No information regarding claimant's hours worked with Smartscripts LLC from May 3, 2020 through July 18, 2020 was provided.

For each of the weekly-continued claims that the claimant filed between May 3, 2020 and February 27, 2021, the claimant responded to the question "did you work during the week of (date week began to date week ended)..." in the negative. Claimant believed that the question which was asking her if she worked meant whether she worked **for Walgreen** that week. The question does not specifically state "did you work for any or all employers". Claimant had separated from employment with Walgreen and did not work for that employer during any of the weeks between May 3, 2020 and February 27, 2021. Because claimant answered the question of "did you work ..." on the weekly-continued claim screen in the negative, no further questions about reporting her gross wages earned were triggered by the computer system. Claimant did not report any gross wages earned from Smartscripts LLC in her weekly continued claims as there was no place for her to do so on the weekly reporting screen.

Because the claimant's weekly-continued claims did not begin paying out until the week of July 19, 2020 instead of May 3, 2020, she exhausted regular unemployment insurance benefits (\$4,905.27) later than she would have if she would have been paid beginning May 3, 2020. It is unknown whether the claimant had excessive earnings above her weekly-benefit amount, plus \$15.00 during the weeks of May 3, 2020 through July 18, 2020.

Claimant exhausted her regular unemployment insurance benefits during the week-ending January 2, 2021 and at that time the claim automatically began paying her PEUC benefits effective January 3, 2021 for her weekly-benefit amount \$211.00. Claimant received PEUC benefit payments of \$1,899.00 for the nine consecutive weeks between January 3, 2021 and March 6, 2021. After March 6, 2021, claimant's account was locked and no further benefits were paid, presumably due to the fraud tip that was received by IWD on March 1, 2021 as no other decisions denying benefits were issued until April 11, 2022 and claimant had been filing weekly-continued claims consecutively through June 12, 2021. No explanation as to why claimant's claim was locked effective March 7, 2021 was provided as the claimant still had a balance of PEUC available to her.

On March 3, 2021, IWD Investigator Seth Jones forwarded a request for wage records to employer Smartscripsts LLC regarding the gross wages earned by the claimant from July 19, 2020 through January 2, 2021. See Exhibit 1. The employer returned the wage records report to IWD. See Exhibit 2.

On April 7, 2022, Mr. Jones conducted an interview of the claimant with her attorney regarding claimant's potential overpayment of benefits. See Exhibit 1. Claimant reported during the interview that she received the payments of unemployment benefits into her personal checking account. See Exhibit 1. Claimant confirmed that she attempted to read and understand the claimant's unemployment insurance benefits handbook online to the best of her ability but that it was only provided in the English language. See Exhibit 1. Claimant reported to Mr. Jones that she attempted to contact IWD to ask questions about her weekly-continued claims. See Exhibit 1. Claimant also reported to Mr. Jones that she answered "no" to the question of "did you work" because she believed the question related to her work status with Walgreen. See Exhibit 1. Claimant had not filed for unemployment insurance benefits in any other state or country at any time prior to May 3, 2020.

For the weeks of July 19, 2020 through January 2, 2021, the claimant was paid regular unemployment insurance benefits funded by the State of Iowa in the amount of \$4,905.27. Claimant was paid PEUC benefits of \$1,688.00 for the weeks between January 3, 2021 and February 27, 2021. Claimant was paid Lost Wages Assistance (LWA) benefits of \$1,800.00 for the weeks of July 26, 2020 through September 5, 2020. Claimant was paid Federal Pandemic Unemployment Compensation (FPUC) benefits of \$3,300.00 for the weeks of July 19, 2020 through February 27, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 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. If the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, the employer's account shall not be charged for the overpayment.

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 § 96.3, 96.4 and 96.19(38).

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...

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 Continued Assistance to Unemployed Workers Act of 2020 (CAA) was enacted, which reauthorized the FPUC program for weeks of unemployment beginning after December 26, 2020 and ending on or before March 14, 2021. The CAA modified the weekly supplemental benefit amount from \$600.00 to \$300.00. 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.

For each of the weekly-continued claims filed between July 19, 2020 and February 27, 2021, the claimant earned gross wages in excess of her regular and PEUC weekly-benefit amount (\$211.00) plus \$15.00. As such, for those weeks, she had excessive earnings and would not have been entitled to regular or PEUC as well as supplemental FPUC benefits.

However, the claimant's claim was not paid out from May 3, 2020 through July 19, 2020 for an unknown reason. When ALJ Golden issued his decisions finding that the claimant was eligible for benefits effective May 3, 2020, regular unemployment insurance benefits should have been paid to the claimant for the weeks beginning May 3, 2020 and not beginning July 19, 2020 as no other disqualification appears on the claimant's administrative records. The record is unknown whether the claimant had excessive earnings from Smartscripts LLC during the period of May 3, 2020 through July 19, 2020 as no request for wage records was made to employer Smartscripts LLC. It is quite possible that the claimant was earning weekly wages below her maximum weekly-benefit amount, plus \$15.00. Further, if the claimant would have begun receiving payment of regular unemployment insurance benefits effective May 3, 2020, she would have begun receiving PEUC payments earlier as well, as her maximum benefit amount could have been reached earlier, depending on gross wages earned from Smartscripts LLC. If claimant was eligible for regular benefits from May 3, 2020 through July 19, 2020, she may have also been eligible for supplemental FPUC benefits that were in place at that time.

Claimant was overpaid FPUC benefits of \$3,300.00 for the weeks between July 19, 2020 and February 27, 2021 due to excessive earnings and her not being eligible for regular or PEUC benefits; however, claimant may be underpaid FPUC benefits for any weeks that she may become eligible for regular or PEUC between May 3, 2020 and January 2, 2021. That matter of potential underpayment of FPUC benefits will be remanded to the Bureau for an initial investigation, determination and payment if due.

The next issue is whether the 15% penalty due to fraud was properly imposed by IWD. The administrative law judge finds that the penalty was not properly imposed. 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.* The administrative law judge finds the claimant's testimony that she believed the question of "did you work" referred to whether she worked for Walgreen and not whether she worked for any and all other employers to be credible, especially in light of the fact that the claimant believed she was "filing against" Walgreen.

Iowa Code section 96.16(4)(a)-(b) provides:

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, be liable to repay to the department for the unemployment compensation fund, a sum equal to the amount so received by the individual. If the department seeks to recover the amount of the benefits by having the individual pay to the department a sum equal to that amount, the department may file a lien with the county recorder in favor of the state on the individual's property and rights to property, whether real or personal. The amount of the lien shall be collected in a manner similar to the provisions for the collection of past-due contributions in section 96.14, subsection 3.

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:

Definitions.

"Fraud" means the 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.

"Misrepresentation" means to give misleading or deceiving information to or omit material information; to present or represent in a manner at odds with the truth.

Fraud and misrepresentation are distinct from each other, this is the reason there are separate definitions of the two terms under Iowa Admin. Code r. 871-25.1. A 15% penalty is only imposed for **fraudulent** overpayments. See Iowa Code section 96.16(4)b. In order to establish fraud, it must be proven that the claimant **intended to deceive another**. See Iowa Admin. Code r. 871-25.1. Simply because the claimant answered the question to "did you work" as "no"

on repeated weekly claims does not necessarily establish intent to deceive. The length of a person's negligence does not turn into intent based upon length of time alone. Especially in light of the fact that the question "did you work" does not state whether the claimant worked "at any job at all" during the week in question and in light of the fact that the claimant is not proficient in the English language and attempted to seek clarification from IWD in filing her weekly claims. It is IWD's burden to establish that the claimant engaged in fraud (intent to deceive) in order to properly access a 15% fraud penalty. IWD failed to meet its burden to establish fraud in this case. Based on the credible evidence presented, the administrative law judge concludes that the penalty due to fraud was improperly imposed by the agency. The fraud penalty shall be removed. Because the fraud penalty has been removed and pursuant to PL 116-136 Section 2104 of the CARES Act, the claimant may request a waiver of the overpayment of FPUC benefits. The request for waiver should be sent to:

Iowa Workforce Development
Overpayment Waiver Request
1000 East Grand Avenue
Des Moines, Iowa 50319

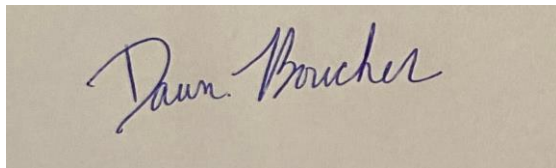
The request for waiver of overpayment should include the claimant's name, address, decision number and date of decision, dollar amount of overpayment requested for waiver, and all relevant facts the claimant feels would justify a waiver of the overpayment balance. The claimant may also visit <https://www.iowaworkforcedevelopment.gov/application-overpayment-waiver>.

DECISION:

The April 11, 2022 (reference 05) unemployment insurance decision is modified in favor of the claimant. The claimant was overpaid FPUC benefits of \$3,300.00 for the weeks between July 19, 2020 and February 27, 2021. However, the claimant may have been underpaid FPUC benefits for other weekly-continued claims filed by the claimant. The 15% penalty due to fraud was improperly imposed in this case and that penalty is removed.

REMAND:

This matter of potential underpayment of FPUC benefits to the claimant is remanded to the Bureau for review, determination, and payment if due.



Dawn Boucher
Administrative Law Judge

October 3, 2022
Decision Dated and Mailed

db/ar

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.