

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

MICHAEL L RAMSEY
Claimant

THEISENS INC
Employer

APPEAL 22A-UI-20166-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (3R)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Public Law 116-136, sec. 2017 – Federal Pandemic Emergency Unemployment Compensation
Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On December 30, 2022, claimant Michael L. Ramsey filed an appeal from the May 11, 2021 (reference 03) unemployment insurance decision that found he was overpaid \$997.00 in federal Pandemic Emergency Unemployment Compensation (“PEUC”) benefits based on a failure to correctly report wages earned while filing benefits and working for employer Theisens Inc. The parties were properly notified of the hearing. A telephonic hearing was held at 2:00 p.m. on Monday, January 23, 2023. Appeal numbers 22A-UI-20166-LJ-T, 22A-UI-20167-LJ-T, and 22A-UI-20168-LJ-T were heard together and created one record. The claimant, Michael L. Ramsey, participated. The employer, Theisens Inc., participated through Heidi Bergfeld, HR Generalist. Claimant’s Exhibits A, B, and C were received and admitted into the record. Department’s Exhibits D-1, D-2, D-3, and D-4 were received and admitted into the record. The administrative law judge left the record open until the close of business on Tuesday, January 24, 2023, to allow claimant to submit supplemental bank statements; he submitted these statements and they have been included in the file. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the appeal timely?
Is the claimant totally, partially, or temporarily unemployed?
Is the claimant overpaid PEUC benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer Theisens Inc. on December 15, 2020. He worked full-time hours for the company as an associate in multiple departments. Claimant’s employment ended on April 30, 2021. That separation has been adjudicated in a second claim year.

Claimant denies filing any weekly continued claims for benefits in the spring of 2021. He was working full-time hours for the employer at the time. Any reduction in his full-time hours between March 28, 2021 and May 1, 2021 was because he was not available to work his regular schedule. Specifically, claimant did not work on April 12, 2021 because he chose not to work that day for personal reasons. Claimant also did not work on Monday, May 1, which is a day he ordinarily would have worked. However, his employment ended on April 30.

The administrative record shows that claimant was the victim of identity theft; someone had fraudulently claimed and received benefits from claimant's unemployment insurance claim between January 17, 2021 and June 12, 2021. The identity theft was confirmed on June 22, 2021. Following the conclusion of the identity theft investigation, claimant was issued a lump-sum direct deposit payment in the amount of \$4,372.00 on July 7, 2021. This lump-sum amount included claimant's four weeks of \$201.00 in partial unemployment benefits for the weeks between March 28, 2021 and April 24, 2021, totaling \$804.00; and claimant's one week of \$481.00 for the week ending May 1, 2021; altogether totaling \$1,285.00. Claimant received the full deposit of \$4,372.00 on July 9, 2021. Claimant was also issued a lump-sum direct deposit FPUC payment in the amount of \$3,600.00 on July 7, 2021. This lump-sum amount included claimant's five weeks of \$300.00 FPUC payments for the weeks between March 28, 2021 and May 1, 2021, totaling \$1,500.00. Claimant received the full deposit of \$3,600.00 on July 9, 2021.

The unemployment insurance decisions finding claimant overpaid PEUC benefits and FPUC benefits were mailed to the claimant's address of record on May 11, 2022. The claimant did not receive the decisions. He has experienced issues in the past with mail delivery and recalls instances where he has not received correspondence. Claimant first learned he had an outstanding overpayment with Iowa Workforce Development ("IWD") when he won a prize at a casino on December 6 or December 11 and learned that the prize would be garnished. He called IWD and received documentation in the mail related to the overpayment, including the decisions that contained appeal rights. He also received a decision in the mail formally notifying him that his winnings would be withheld to repay the outstanding overpayment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was overpaid PEUC benefits for the weeks in question.

The first issue is whether the claimant's appeal shall be accepted as timely. The administrative law judge determines it shall. 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(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).

Here, the claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the lottery prize withholding decision, which was the first notice of overpayment and was the first notice he had of his ability to appeal the decisions. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant has been overpaid benefits due to total, partial, or temporary unemployment. The administrative law judge finds that claimant was not totally or partially unemployed, and therefore he has been overpaid benefits.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37", paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code § 96.1A(37) provides in relevant part:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has performed services and earned wages for each week he has claimed benefits. He is not totally unemployed.

In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his regular full-time work week. *Id.* If an individual is employed in a full-time or part-time position and voluntarily restricts his availability for work during times when the employer has work available for him, he cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(16) (stating that a claimant is disqualified as not available for work when his “availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.”).

In this case, claimant worked his regular full-time schedule during the weeks between March 28, 2021 and May 1, 2021. The two days of work that he did not work were not due to a lack of hours available from the employer. Rather the claimant chose not to work April 12, 2021, and the claimant ended his employment prior to May 1, 2021. The administrative law judge finds claimant was not partially unemployed. Because he was neither totally nor partially unemployed, he was not eligible for benefits.

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.

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.

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.

Because claimant is not eligible for UI benefits, claimant is not eligible for PEUC benefits. Therefore, claimant has received PEUC benefits to which he was not entitled. The administrative law judge concludes that claimant has been overpaid PEUC benefits in the amount of \$1,285.00 for the five weeks between March 28, 2021 and May 1, 2021. Claimant is obligated to repay the PEUC benefits unless repayment of this obligation is waived.

This matter is remanded for review of claimant's claim and issuance of further fact-finding decisions consistent with that review.

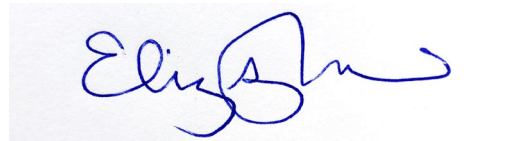
DECISION:

The May 11, 2021 (reference 03) unemployment insurance decision is modified in favor of the employer/IWD. The claimant was neither totally nor partially unemployed between March 28, 2021 and May 1, 2021. The claimant has been overpaid PEUC benefits in the amount of \$1,285.00 and is obligated to repay the agency those benefits unless repayment of that obligation is waived.

REMAND:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development to review claimant's separation decision issued in the claim year effective July 25, 2021, and to issue a decision in this claim year, if necessary, consistent with the outcome of that decision.

This matter is remanded to the Benefits Bureau for further review of benefits payments issued to claimant following the investigation into his identity theft claim and to issue any necessary and appropriate overpayment decisions consistent with that review.



Elizabeth A. Johnson
Administrative Law Judge

January 30, 2023
Decision Dated and Mailed

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NOTE TO CLAIMANT:

- This decision determines you have been overpaid PEUC benefits. If you disagree with this decision, you may file an appeal by following the instructions on the last 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.

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.