

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

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**DONAI MARKS**  
Claimant

**APPEAL NO. 22A-UI-17189-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KANDK INC**  
Employer

**OC: 11/01/20  
Claimant: Appellant (1)**

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P.L. 116-136, §2107 – Pandemic Emergency Unemployment Compensation Overpayment  
Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.1A(37) – Temporary & Partial Unemployment

**STATEMENT OF THE CASE:**

On September 15, 2022, Donai Marks (claimant) filed a timely appeal from the September 7, 2022 (reference 03) decision that held she was overpaid \$1,066.00 in Pandemic Emergency Unemployment Compensation (PEUC) benefits for eight weeks between February 7, 2021 and April 3, 2021, based on the deputy's conclusion the claimant failed to report or incorrectly reported wages earned with KandK, Inc. After due notice was issued, a hearing commenced on October 17, 2022 and concluded on October 18, 2022. Claimant participated. Krista Kay represented the employer. There were four appeal numbers set for a consolidated hearing: 22A-UI-17187-JT-T, 22A-UI-17188-JT-T, 22A-UI-17189-JT-T, and 22A-UI-17192-JT-T. Department Exhibits D-1 through D-9 were received into evidence.

**ISSUES:**

Whether the claimant was able to work and available for work between February 7, 2021 and April 3, 2021.

Whether the claimant was partially and/or temporarily unemployed between February 7, 2021 and April 3, 2021.

Whether the claimant failed to report and/or incorrectly reported wages for the period between February 7, 2021 and April 3, 2021.

Whether the claimant was overpaid \$1,066.00 in Pandemic Emergency Unemployment Compensation (PEUC) benefits for eight weeks between February 7, 2021 and April 3, 2021.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Donai Marks (claimant) established an original claim for benefits that was effective November 1, 2020. Iowa Workforce Development set the weekly benefit amount at \$348.00. The claimant made weekly claims that included weekly claims for each of the eight weeks between February 7, 2021 and April 3, 2021. For that period, the claimant consistently underreported wages and received Pandemic Emergency Unemployment Compensation benefits as follows:

<u>Benefit Week End Date</u>	<u>Wages Reported</u>	<u>PEUC Benefits Paid</u>
2/13/21	190.00	245.00
2/20/21	220.00	215.00
2/27/21	212.00	223.00
3/6/21	250.00	185.00
3/13/21	300.00	135.00
3/20/21	350.00	85.00
3/27/21	200.00	235.00
4/3/21	300.00	135.00

In connection with her receipt of PEUC benefits for the eight weeks between February 7, 2021 and April 3, 2021, the claimant also received \$300.00 in Federal Pandemic Unemployment Compensation (FPUC) for each of the eight weeks between February 7, 2021 and April 3, 2021. The claimant's eligibility for the \$300.00 in FPUC weekly benefits depended on her eligibility for PEUC benefits for the same week.

At the time the claimant established the November 1, 2020 original claim, and at the time the claimant made the weekly claims for the eight weeks between February 7, 2021 and April 3, 2021, she was employed with KandK, Inc., doing business as Go Fish Marina Bar & Grill, as a part-time server and bartender. The claimant's compensation consisted of an hourly wage plus tips. The claimant began employment in March 2020. During the relevant period, the claimant's hourly wage was \$6.50 when she worked as a server and \$10.00 when she worked as a bartender. The employer had a peak business season during the warmer months and a slower business season during the cooler months. The claimant averaged 25 to 30 hours a week during the busy season, with some weeks providing significantly more hours. The claimant averaged 15 to 25 hours a week in the off-peak season.

The claimant's quarterly wages from the start of the employment through the first quarter were as follows:

<u>Quarter</u>	<u>Wages</u>	<u>Average Weekly Wage</u>
2020/1	727.96	Insufficient Data
2020/2	3,556.84	273.60
2020/3	8,017.29	616.71
2020/4	4,976.84	382.83
2021/1	3,903.62	300.28

In July 2021, Iowa Workforce Development audited the claimant's unemployment insurance claim. The audit period included the eight weeks between February 7, 2021 and April 3, 2021. On July 14, 2021, IWD solicited information from the employer regarding the claimant's weekly work hours, weekly wages, and weekly tip. On July 21, 2021, the employer provided the following requested information for the eight weeks in question:

<u>Week End Date</u>	<u>Hours</u>	<u>Gross Wages</u>	<u>Tips</u>	<u>(TOTAL)</u>
2/13/21	14.93	149.30	140.20	289.50
2/20/21	20.22	202.20	219.67	421.87
2/27/21	20.13	201.30	169.57	370.87
3/6/21	19.48	194.80	223.26	418.06
3/13/21	18.94	189.40	288.26	477.66
3/20/21	21.28	212.80	310.35	523.15
3/27/21	13.41	134.10	131.41	265.51
4/3/21	20.22	202.20	157.25	359.45

The claimant concedes the information provided by the employer is accurate.

During the eight weeks between February 7, 2021 and April 3, 2021, the claimant made herself available for all of the work hours the employer made available.

Upon receipt of the wage information provided by the employer, an Iowa Workforce Development representative redetermined the claimant's benefit eligibility. During the weeks that ended February 20, February 27, March 6, March 13, and March 20, 2021, the claimant's total earned wages, including hourly wages and tips, exceeded the claimant's \$348.00 weekly amount plus \$15.00 (\$363.00). For this reason, the deputy concluded the claimant was not eligible for the PEUC benefits the claimant received for these five weeks and that the \$843.00 in PEUC benefits the claimant received for those five weeks was an overpayment of benefits. In addition, based on wage information provided by the employer, and due to the claimant's underreporting of wages, the deputy determined the claimant was overpaid \$99.00 in PEUC for the week that ended February 13, 2021, \$65.00 in PEUC for the week that ended March 27, and \$59.00 in PEUC for the week that ended April 3, 2021. The deputy determined the total overpayment was \$1,066.00.

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

PL 116-136, Section 2107(e) provides, in relevant part, as follows:

(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.

(3) Recovery by State agency

(A) In general

The State agency shall recover the amount to be repaid, or any part thereof, by deductions from any pandemic emergency unemployment compensation payable to such individual under this section 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 pandemic emergency unemployment compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State.

(B) 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.

(4) 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.

Gross wages must be reported to Iowa Workforce Development as part of the weekly claim for the week in which the wages were earned. See Iowa Administrative Code rules 871-24.2(1)(g)(3)(2) and 871-24.2(2)(e)(2). The wages to be reported include tips. See Iowa Administrative Code rule 871-24.13(2)(g).

The reporting requirement is addressed in the 2019 Unemployment Insurance Claimant Handbook at page 8:

What to Report on the Weekly Claim?

You must report all gross earnings and gross wages on the weekly claim. Wages are reportable when earned, not when paid. Gross earnings or gross wages are your earnings before taxes or other payroll deductions are made. For additional information, please refer to the page on reportable income.

2019 Unemployment Insurance Claimant Handbook Updated 1-1-20.pdf.

Iowa Admin. Code rule 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 deduction 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.

Iowa Code section 96.4(3)(a) provides as follows:

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

3. a. 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 Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Code section 96.1A(37) provides:

"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.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

If a claimant to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The claimant was able to work and available for work throughout the eight weeks between February 7, 2021 and April 3, 2021. However, because the claimant's weekly wages during each of the five weeks between February 14, 2021 and March 20, 2021 equaled or exceeded

her weekly benefits amount plus \$15.00, the claimant was not partially unemployed within the meaning of the law during any of those weeks and is not eligible for PEUC benefits for those weeks. All of the \$843.00 in PEUC benefits the claimant received for the five weeks between February 14, 2021 and March 20, 2021 are overpaid benefits. The claimant was partially unemployed during the weeks that ended February 13, March 27, and April 3, 2021, but underreported her wages for those weeks. The deputy correctly computed the PEUC overpayments for those weeks as \$99.00, \$65.00 AND \$59.00 respectively and correctly computed the combined overpayment as \$1,066.00 for the eight weeks between February 7, 2021 and April 3, 2021. The claimant must repay the overpaid PEUC benefits unless the claimant applies for and is approved for waiver of repayment of PEUC benefits. See below.

**DECISION:**

The September 7, 2022 (reference 03) decision is AFFIRMED. The claimant was overpaid \$1,066.00 in PEUC for the eight weeks between February 7, 2021 and April 3, 2021, due to the claimant's underreporting of wages for that period. The claimant must repay the overpaid PEUC benefits unless the claimant applies for and is approved for waiver of repayment of PEUC benefits. See below.



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James E. Timberland  
Administrative Law Judge

October 31, 2022  
Decision Dated and Mailed

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*Note to Claimant:* This decision determines you have been overpaid PEUC under the CARES Act. If you disagree with this decision, you may file an appeal by following the instructions on the final page of this decision. Additionally, instructions for requesting a waiver of this PEUC overpayment can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment>. If this decision becomes final and you are not eligible for a PEUC waiver, you will have to repay the overpaid PEUC 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  
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>.

**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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**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.