

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KAREN D TABER**  
Claimant

**APPEAL 21A-UI-02776-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 03/15/20**  
**Claimant: Appellant (4)**

Iowa Code § 96.3(7) – Overpayment of Benefits – Lost Wages Assistance

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the February 1, 2021 (reference 07) unemployment insurance decision that found claimant was overpaid Lost Wages Assistance (LWA) benefits in the amount of \$1,800.00 for six weeks between July 26, 2020 and September 5, 2020. The claimant was properly notified of the hearing. A telephone hearing was held on March 11, 2021. The claimant participated personally. Claimant's Exhibits A, B, C, D, E, and F were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 21A-UI-02764-DB-T; 21A-UI-02767-DB-T; 21A-UI-02770-DB-T; 21A-UI-02773-DB-T; and 21A-UI-02762-DB-T.

**ISSUE:**

Is the claimant overpaid LWA benefits from July 26, 2020 through September 5, 2020?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant started working for this employer in the Fall of 1998. She has worked as an on-call substitute teacher beginning on October 2, 2014 and continues to work for the employer in that same capacity. Claimant filed her original claim for unemployment insurance benefits effective March 15, 2020. Claimant's established weekly-benefit amount was \$180.00. Claimant filed an additional claim for benefits effective November 22, 2020. Claimant's administrative records establish that her base period included the following on-call wages with an educational institution:

	2018/4	2019/1	2019/2	2019/3
Ames Community School District	\$4,160.00	\$2,970.00	\$3,255.00	\$840.00

Claimant's administrative records establish that she filed weekly-continued claims for benefits for the following weeks and was paid the following amounts in regular unemployment insurance benefits:

Week-ending March 21, 2020	Paid \$180.00 in regular benefits
Week-ending March 28, 2020	Paid \$180.00 in regular benefits
Week-ending April 4, 2020	Paid \$180.00 in regular benefits
Week-ending April 11, 2020	Paid \$180.00 in regular benefits

Week-ending April 18, 2020	Paid \$180.00 in regular benefits
Week-ending April 25, 2020	Paid \$180.00 in regular benefits
Week-ending May 2, 2020	Paid \$180.00 in regular benefits
Week-ending May 9, 2020	Paid \$180.00 in regular benefits
Week-ending May 16, 2020	Paid \$180.00 in regular benefits
Week-ending May 23, 2020	Paid \$180.00 in regular benefits
Week-ending May 30, 2020	Paid \$180.00 in regular benefits
Week-ending June 6, 2020	Paid \$180.00 in regular benefits
Week-ending June 13, 2020	Paid \$180.00 in regular benefits
Week-ending June 20, 2020	Paid \$180.00 in regular benefits
Week-ending June 27, 2020	Paid \$180.00 in regular benefits
Week-ending July 4, 2020	Paid \$180.00 in regular benefits
Week-ending July 11, 2020	Paid \$180.00 in regular benefits
Week-ending July 18, 2020	Paid \$180.00 in regular benefits
Week-ending July 25, 2020	Paid \$180.00 in regular benefits
Week-ending August 1, 2020	Paid \$180.00 in regular benefits
Week-ending August 8, 2020	Paid \$141.67 in regular benefits
Week-ending August 15, 2020	Paid \$180.00 in PEUC benefits
Week-ending August 22, 2020	Paid \$180.00 in PEUC benefits
Week-ending August 29, 2020	Paid \$180.00 in PEUC benefits
Week-ending September 5, 2020	Paid \$180.00 in PEUC benefits
Week-ending September 12, 2020	Paid \$180.00 in PEUC benefits
Week-ending September 19, 2020	Paid \$180.00 in PEUC benefits
Week-ending September 26, 2020	Paid \$180.00 in PEUC benefits
Week-ending October 3, 2020	Paid \$180.00 in PEUC benefits
Week-ending November 21, 2020	Paid \$0.00
Week-ending November 28, 2020	Paid \$0.00
Week-ending December 5, 2020	Paid \$0.00

For the week-ending March 21, 2020, work was not available because the employer was on its customary spring break and the claimant had reasonable assurance to return after the customary break.

For the week-ending March 28, 2020 through the week-ending April 18, 2020, the school was completely closed during the COVID-19 pandemic and the claimant had no opportunity to work due to the closure.

The schools reopened in an online learning environment only for the remainder of the school year beginning the benefit week of April 19, 2020 through the end of the school year on June 2, 2020 (week-ending June 6, 2020). There were substitute teaching positions available while the school was operating in an online only learning environment, but the positions were limited due to the fact that regulations changed to allow a larger pool of participants to substitute teach and regular teachers could work from home.

Following the end of the 2019/2020 term, the claimant was sent an email communication that asked if she intended to be a substitute teacher for the 2020/2021 school year. Claimant completed that form and indicated that she did intend to continue to be a substitute teacher for the upcoming 2020/2021 school year. From the week of June 7, 2020 through the week-ending August 22, 2020, the school was shut down due to its regular summer closure between academic years or terms.

The 2020/2021 school year was scheduled to begin on or about August 24 – 26, 2020, depending on the school; however, the schools did not reopen until September 8, 2020 and did so in an online learning environment only. See Exhibit A. Therefore, for the week beginning

August 23, 2020 through the week-ending September 5, 2020, the schools were completely closed and there was no work available for the claimant as a substitute teacher.

Schools began the 2020/2021 school year in an online learning environment from September 8, 2020 through the week-ending September 19, 2020. There was work available to substitute teachers but it was again limited due to regular teachers being able to teach from home and the pool of substitute teachers being expanded due to changed regulations.

Schools were open in person from the week beginning September 20, 2020 through November 10, 2020. However, claimant was ill effective September 21, 2020 and was required to quarantine due to COVID-19 like symptoms through the week-ending October 3, 2020, so she did work due to quarantine during that period of time.

Claimant returned to work as a substitute teacher effective the week beginning October 4, 2020 through November 10, 2020. She worked 24 days during this time period. See Exhibit A.

On or about November 11, 12, and 16, 2020, the employer again transitioned to an online only learning environment through December 9, 2020. There were substitute positions available; however, they were limited again due to regular teachers being able to work from home and other persons being able to substitute teach.

Schools transitioned back to in person learning on December 9, 2020. Claimant has worked substitute teaching assignments since December 9, 2020.

Claimant's administrative records establish that she was paid regular unemployment insurance benefits of \$3,741.67 from March 15, 2020 through August 8, 2020. Claimant was paid Lost Wages Assistance (LWA) benefits of \$1,800.00 from July 26, 2020 through September 5, 2020. Claimant was paid Federal Pandemic Unemployment Compensation (FPUC) benefits of \$10,200.00 from March 29, 2020 through July 25, 2020. Claimant was paid Pandemic Emergency Unemployment Compensation (PEUC) benefits of \$1,440.00 from August 9, 2020 through October 3, 2020.

Regular unemployment insurance benefits were denied from March 15, 2020 through March 21, 2020 due to the claimant having reasonable assurance during a customary break period. See Appeal No. 21A-UI-02767-DB-T. Claimant was paid \$180.00 during that one-week period that she was found to be ineligible for regular unemployment insurance benefits. No LWA benefits were paid to the claimant during that period and as such there is no overpayment of LWA benefits for that period.

Regular unemployment insurance benefits were allowed from March 22, 2020 through April 18, 2020 in Appeal No. 21A-UI-02762-DB-T. No LWA benefits were paid during this allowance period and as such there is no overpayment of LWA benefits for that period.

Regular unemployment insurance benefits were denied from April 19, 2020 through June 6, 2020 in Appeal No. 21A-UI-02762-DB-T. Claimant received \$1,260.00 in regular unemployment insurance benefits during that seven-week period of time she was found to be ineligible. No LWA benefits were paid during this period and as such there is no overpayment of LWA benefits for that period.

Regular unemployment insurance benefits were denied from June 7, 2020 through August 22, 2020 in Appeal No. 21A-UI-02767-DB-T due to reasonable assurance. Claimant was paid \$1,581.67 for nine weeks between June 7, 2020 and August 8, 2020. Claimant was paid LWA benefits of \$1,200.00 from July 26, 2020 through August 22, 2020 during this period of

ineligibility (4 weeks at \$300.00 per week). As such, the claimant is overpaid LWA benefits of \$1,200.00 from July 26, 2020 through August 22, 2020.

Regular unemployment insurance benefits were allowed from August 23, 2020 through September 5, 2020 in Appeal No. 21A-02762-DB-T. Claimant had received \$600.00 in LWA benefits from August 23, 2020 through September 5, 2020 during this allowance period. Because at least \$100.00 of regular unemployment insurance benefits were allowed each of those weeks, then the claimant is not overpaid any LWA benefits for that period. No further LWA benefits were paid after September 5, 2020.

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

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

On August 8, 2020, President Trump signed the *Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019*. It provided in pertinent part:

“Sec 4. Assistance Program for Lost Wages.

- (a) For purposes of this memorandum, “State” includes the territories and the District of Columbia, and “Governor” includes the chief executive thereof.
- (b) To help meet the needs of the American people during this unprecedented and continuously evolving public health crisis, the Secretary of Homeland Security (Secretary), acting through the FEMA Administrator, is authorized to make available other needs assistance for lost wages, in accordance with section 408(e)(2) of the Stafford Act (42 U.S.C. 5174(e)(2) (“lost wages assistance”), to the people of a State, including the members of any tribe residing therein, if the Governor requests lost wages assistance and agrees to administer delivery and provide adequate oversight of the program, for a major disaster I declared pursuant to section 401 of the Stafford Act (42 U.S.C. 5170) for COVID-19, under the following conditions:
  - (i) the Governor requests from the FEMA Administrator a grant for lost wages assistance pursuant to 42 U.S.C. 5174(f)(1)(A) and agrees to the cost-sharing requirement of 42 U.S.C. 5174(g)(2); and
  - (ii) the Governor administers delivery of financial assistance for lost wages in conjunction with the State’s unemployment insurance system.
- (c) In exercising this authority, the Secretary, acting through the FEMA Administrator, shall, subject to the limitations above, approve a lost wages assistance program that authorizes the Governor to provide a \$400 payment per week, which shall reflect a \$300 Federal contribution, to eligible claimants from the week of unemployment ending August 1, 2020.
- (d) For purposes of this memorandum, the term “Eligible claimants” means claimants who:
  - (i) receive, for the week lost wages assistance is sought, at least \$100 per week of any of the following benefits:
    - (A) Unemployment compensation, including Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-Service members (UCX), under section 8501 of title 5, United States Code;
    - (B) Pandemic Emergency Unemployment Compensation (PEUC), under section 2107 of the CARES Act;

- (C) Pandemic Unemployment Assistance (PUA), under section 2102 of the CARES Act;
  - (D) Extended Benefits (EB), under section 3304 of title 26, United States Code;
  - (E) Short-Time Compensation (STC), under section 3306(v) of title 26, United States Code;
  - (F) Trade Readjustment Allowance (TRA), under sections 2291 through 2293 of title 19, United States Code; and
  - (G) Payments under the Self-Employment Assistant (SEA) program, under section 3306(t) of title 26, United States Code; and
- (ii) provide self-certification that the claimant in unemployed or partially unemployed due to disruptions caused by COVID-19.
- (e) The authority vested in the Secretary, acting through the FEMA Administrator, to approve lost wages assistance shall not be construed to encompass authority to approve other forms of assistance.

The state is responsible for refunding to FEMA any unobligated balances that FEMA paid that are not authorized to be retained per 2 C.F.R. 200.343(d) and the state is also responsible for recovering assistance awards from claimants obtained fraudulently. See UIPL No. 27-20 Change 1 dated August 17, 2020 citing 44 C.F.R. 206.120(f)(4 and 5). 44 C.F.R. § 206.16 provides as follows:

- (a) The applicant must agree to repay to FEMA (when funds are provided by FEMA) and/or the State (when funds are provided by the State) from insurance proceeds or recoveries from any other source an amount equivalent to the value of the assistance provided. In no event must the amount repaid to FEMA and/or the State exceed the amount that the applicant recovers from insurance or any other source.
- (b) An applicant must return funds to FEMA and/or the State (when funds are provided by the State) when FEMA and/or the State determines that the assistance was provided erroneously, that the applicant spent the funds inappropriately, or that the applicant obtained the assistance through fraudulent means.

Iowa Code § 96.3(7)a provides:

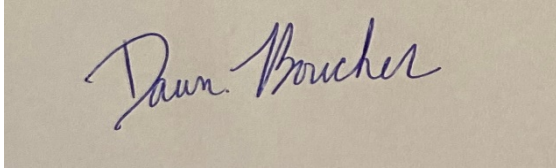
7. Recovery of overpayment of benefits.

- 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.

In this case, the only weeks in which the claimant was found ineligible for unemployment insurance benefits and was also paid LWA benefits was from July 26, 2020 through August 22, 2020 when the claimant was paid \$1,200.00 in LWA benefits. See Appeal No 21A-UI-02767-DB-T. As such, the claimant is overpaid LWA benefits of \$1,200.00 from July 26, 2020 through August 22, 2020.

**DECISION:**

The February 1, 2021 (reference 07) unemployment insurance decision is modified in favor of the claimant. The claimant was overpaid LWA benefits of \$1,200.00 for the period between July 26, 2020 and August 22, 2020. Claimant was not overpaid LWA benefits for the two-week period of August 23, 2020 through September 5, 2020 as benefits were allowed to her in Appeal No. 21A-UI-02762-DB-T.

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Dawn Boucher  
Administrative Law Judge

March 31, 2021  
Decision Dated and Mailed

db/kmj