

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

AYRIN J. ALEXANDER
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 22A-UI-18562-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1R)

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

STATEMENT OF THE CASE:

On November 3, 2022, the claimant/appellant filed an appeal from the October 27, 2022 (reference 06) Iowa Workforce Development (“IWD”) unemployment insurance decision that found claimant was overpaid FPUC benefits in the amount of \$900.00 for three weeks between December 27, 2020, and February 27, 2021 because claimant failed to report wages. IWD imposed a 15% administrative penalty due to misrepresentation. The parties were properly notified of the hearing. A telephone hearing was held on November 30, 2022. The claimant participated personally. This hearing was consolidated with Appeals 22A-UI-18558-CS-T; 22A-UI-18559-CS-T; 22A-UI-18560-CS-T; and 22A-UI-18561-CS-T. The claimant participated personally. Kara Harrison participated on behalf of IWD. IWD Exhibits A1, A2, A3, A4, A5, A6, A7, B1, B2, C1, C2, C3, C4, C5, C6, C7, C8, C9, and C10 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

ISSUES:

- I. Did IWD correctly determine that claimant was overpaid FPUC benefits and was the overpayment amount correctly calculated?
- II. Did IWD properly impose a penalty based upon claimant’s misrepresentation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits with an effective date of March 29, 2020. Her weekly benefit amount was \$278.00 based upon the wages reported in her base period.

Claimant filed weekly-continued claims beginning March 29, 2020. Claimant admits she filed for benefits through April 25, 2020 and denies filing for any additional weeks after that week. Claimant initially filed for benefits due to Walmart, Inc.'s COVID policy that prohibited employees from working if they showed a broad array of symptoms. Claimant was sent home from time to time because she was had one of the symptoms the employer prohibited employees from having in order to work. As a result, claimant filed for benefits to supplement the time(s) she was sent home. Claimant stopped working for Walmart Inc. on or about August 6, 2020. (Exhibit A3-1). Claimant began working for The City of Ames on or about July 12, 2020. (Exhibit A3-2). Claimant is a full-time college student and it is unclear whether claimant was a full-time college student at the time she filed for benefits. (See Appeal).

Claimant's administrative record shows continuing weekly claims were filed on her behalf through April 25, 2021. Each weekly payment was deposited into the same back account during the entire claim period. Additionally, each weekly claim was manually entered and no one but claimant had access to her unemployment login information.

Claimant filed weekly-continued claims beginning March 29, 2020 and consecutively each week there after during her benefit year. Claimant received regular unemployment insurance benefits funded by the State of Iowa in the amount of \$7,228.00 from March 29, 2020 through December 5, 2020, when she reached her maximum benefit amount.

Claimant was then paid \$278.00 in weekly Pandemic Emergency Unemployment Compensation (PEUC) benefits for a gross total amount of \$4,448.00 beginning December 6, 2020 through March 27, 2021. Claimant was paid Federal Pandemic Unemployment Compensation (FPUC) benefits as a supplement to her PEUC benefits. These benefits were paid in the weekly amount of \$300.00 per week for the weeks between December 27, 2020 and March 27, 2021.

IWD conducted an audit and discovered claimant was working for Walmart, Inc. and The City of Ames during the weeks in which she filed her weekly-continued claims for benefits. (Exhibits A3-1 and A3-2). IWD sent Walmart, Inc. and The City of Ames a request of wage records for claimant. The employers responded to the request of wage records. (See Exhibits A3-1, A2-2).

During the audit Iowa Workforce Development concluded there was a wage discrepancy for the following weeks. (Exhibit C2-1-2). For the week ending January 2, 2021, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in PEUC benefits. (DBRO). Claimant also received \$300.00 in gross FPUC benefits. (KPYX). Wage records from The City of Ames establish claimant requested the week off from work. See Exhibit A3-3.

For the week ending February 13, 2021, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in PEUC benefits. (DBRO). Claimant also received \$300.00 in gross FPUC benefits. (KPYX). Wage records from The City of Ames establish claimant received \$354.26 in wages. See Exhibit A3-3.

For the week ending February 27, 2021, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in PEUC benefits. (DBRO). Claimant also received \$300.00 in gross FPUC benefits. (KPYX). Wage records from The City of Ames establish claimant received \$359.36 in wages. See Exhibit A3-3.

Because the claimant did not report her wages IWD found claimant was an overpaid \$900.00 in FPUC benefits from December 27, 2020, through February 27, 2021. (Exhibit C9). In addition to the overpayment, a 15% penalty was imposed to the FPUC benefit overpayment due to claimant's misrepresentation or intentional omission of wages in order to collect benefits.

The online handbook for claimants provides that "you must report all gross wages and all gross earnings on the weekly claim." See Exhibit B1-5. It further states that "wages are reported when earned, not when paid." See Exhibit B1-5. Claimant testified she read the Claimant Handbook when she filed her initial application for unemployment insurance benefits.

The handbook alerts claimants to the consequences for providing false or fraudulent statements to collect benefits:

"Fraud is knowingly providing false information or withholding information to receive UI benefits. Fraudulently collecting UI benefits is a serious offense. It can lead to severe penalties, which include:

- criminal prosecution, fines, and imprisonment
- An overpayment of fraudulently collected unemployment insurance benefits that you must repay, plus a fifteen percent misrepresentation penalty and daily interest . . .
- Denial of benefits by administrative penalty, meaning you will be ineligible to receive future unemployment insurance benefits for anywhere from four weeks to the end of your benefits year, even after the overpayment is paid in full." (Exhibit B1(2)).

In appeal 22A-UI-18561-CS-T it has been determined claimant is disqualified from receiving PEUC unemployment benefits for the weeks ending January 2, 2021, February 13, 2021, and February 27, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes IWD correctly calculated the claimant's overpayment of FPUC benefits and the 15% penalty due to misrepresentation was properly imposed.

PL 116-136, 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, except that the State agency may waive such repayment if it determines that—

(A) the payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual; and

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

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 President signed into law the Consolidated Appropriations Act, 2021, which includes Division N, Title II, Subtitle A, the Continued Assistance Act. Section 203 reauthorized the FPUC program for weeks of unemployment beginning after December 26, 2020 and ending on or before March 14, 2021 and modified the weekly supplement payment to \$300.00. On March 11, 2021, the President signed the American Rescue Plan Act of 2021 (ARPA). Section 9103 of ARPA amends Section 2104 of the CARES Act of 2020 and extended the FPUC program for weeks of unemployment ending on or before September 6, 2021. 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.

The administrative law judge has found claimant is not eligible for benefits the weeks ending January 2, 2021, February 13, 2021, and February 27, 2021. Because claimant is not eligible for PEUC benefits, claimant is also not eligible for FPUC benefits. Therefore, claimant has received FPUC benefits to which she was not entitled. The administrative law judge concludes claimant has been overpaid FPUC benefits for three weeks for a total gross amount of \$900.00. These benefits must be recovered in accordance with the law.

The next issue to be determined is whether the imposition of an administrative penalty due to fraud was proper. For the reasons that follow, the administrative law judge concludes the penalty was proper.

PL 116-136 Sec 2104(f) provides in pertinent part:

EMERGENCY INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

(f) FRAUD AND OVERPAYMENTS. – (1) IN GENERAL. –

If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of Federal Pandemic Unemployment Compensation to which such individual was not entitled, such individual –

(A) shall be ineligible for further Federal Pandemic Unemployment Compensation in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

(B) shall be subject to prosecution under section 1001 of title 18, United States Code.

UIPL No. 20-21 issued on May 5, 2021 provides that “[w]ithin the context of the CARES Act, states must apply a minimum 15 percent monetary penalty to an individual’s overpayment when the state determines that such an overpayment was made to an individual due to fraud”. See Page 4. “Fraud includes instances where an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact.” *Id.* page 4-5. See also Section 251(a) of the Trade Adjustment Assistance Extension Act of 2011(TAAEA)(Pub. L. 112-40).

The administrative law judge is persuaded the claimant knew she must report all wages earned each week that she sought to claim unemployment insurance benefits. The claimant under reported her wages or reported she did not perform work during these three weeks. Furthermore claimant’s testimony that she did not file for benefits after April 25, 2020 is not credible. This was blatantly false so she could receive benefits. This misrepresentation allowed claimant to collect wages, PEUC benefits, and FPUC benefits.

The administrative law judge finds that the claimant knowingly omitted material information by failing to report her gross earnings from The City of Ames when she filed her weekly-continued claims for unemployment insurance benefits. This was fraud which led to the payment of benefits. Therefore, the penalty of 15% was properly imposed pursuant to PL 116-136 Sec 2104(f) and UPIL No 20-21 issued on May 5, 2021.

DECISION:

The October 27, 2022 (reference 06) unemployment insurance decision is affirmed. The claimant is overpaid FPUC benefits in the amount of \$900.00 for the three weeks between December 27, 2020, and February 27, 2021 and is required to repay the agency this overpayment balance. The claimant engaged in misrepresentation and IWD properly imposed the administrative penalty of 15%. The penalty due to misrepresentation must be repaid as well.

Claimant should note the overpayment amount may increase after the issues on remand have been determined.

REMAND:

The issue of whether claimant is entitled to unemployment benefits is remanded to the benefits bureau for an initial investigation and determination. The benefits bureau should look at the issues of whether claimant was employed for the same hours and wages, and whether claimant was totally, partially, or temporarily unemployed with employers Walmart Inc. and The City of Ames during this claim year.



Carly Smith
Administrative Law Judge

December 7, 2022

Decision Dated and Mailed

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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.