

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PENNY HUDSON
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL NO. 21A-UI-09901-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits
Fed Law PL 116-136, Sec. 2104 – Overpayment of FPUC
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Admin. Code r. 871-25.1 – Misrepresentation & Fraud

STATEMENT OF THE CASE:

The claimant/appellant, Hudson, filed an appeal from the March 24, 2021 (reference 04) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded the claimant was overpaid FPUC unemployment insurance benefits because she failed to accurately report earnings while concurrently filing weekly claims for unemployment insurance benefits.

The parties were properly notified of the hearing. A telephone hearing was held on June 23, 2021. The claimant, Hudson, participated personally and with attorney Peter Sand. Daniel Noonan, Investigator, participated on behalf of IWD. IWD was also represented by counsel Jeffrey Koncsol. IWD Exhibits 1-12 were admitted. Claimant’s exhibits A-I were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Whether claimant is overpaid FPUC unemployment insurance benefits?

Did IWD properly impose a penalty based upon the 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 April 5, 2020.

When the claim was established, the claimant was directed to read the Unemployment Insurance Handbook. The Unemployment Insurance Handbook includes instructions for properly filing claims and informs claimants that failure to follow the instructions could result in a

denial or overpayment of benefits. The handbook also informs claimants that they should call IWD customer service for help if they don't understand the information in the handbook.

With respect to "Reporting Earnings," the handbook states:

Gross earnings/wages (before tax and payroll deductions) must be reported on the weekly claim during the week the wages are earned, not when the wages are paid. Earnings must be reported even if the payment has not been received yet. To calculate the amount to report, the individual should multiply the number of hours worked by the hourly wage. Individuals should report the full gross amount of earnings and IWD will calculate any deductions. If an individual earns \$15.00 over their WBA, they will not receive a benefit payment

The handbook also provides in part:

Overpayment

Individuals are responsible for repaying any benefits they were not eligible to receive. Future UI benefit payments are withheld until the overpayment has been recovered in full. If the individual is not making attempts to repay the overpayment, the debt may be recovered by withholding state and federal tax refunds, casino and lottery winnings, and vendor payments. Overpayments caused by fraud include a 15% penalty.

The handbook also alerts claimants to 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
- denial of future benefits by administrative penalty
- repayment of fraudulently collected UI benefits plus a 15 percent penalty
- wages garnishments and liens
- interception of state and federal tax refunds

In addition, each week the claimant would complete a weekly continued claim, she would see a screen online which provided:

It is important that you answer all questions truthfully.

WARNING: Attempting to claim and receive unemployment insurance benefits by entering false information can result in loss of benefits, fines and imprisonment.

Before completing her weekly continued claim each week, the claimant had to check a box that stated she understood the warning message above and wished to proceed.

IWD conducted an audit and discovered that claimant received wages from Area Education Agency 11 during the time period of April 5, 2020 through January 2, 2021, but failed to report the wages. IWD contacted AEA on March 15, 2021 to verify the claimant's wages earned with employer. The employer confirmed the claimant performed work and was paid wages from April 5, 2020 through January 2, 2021.

A review of the administrative file reflects the claimant did not report the same wages at the employer. Each week, from April 11, 2020 through January 2, 2021, the claimant reported she

earned \$0.00 in wages, when she filed her weekly continued claim, even though she was performing work.

As a result of the employer's verification of wages, IWD also contacted the claimant. The claimant was mailed a preliminary audit which stated she may have been overpaid benefits in the amount of \$12,506.00, for failing to report her wages. The letter also informed Hudson that an overpayment may result in consequences including a 15% penalty.

Claimant contacted IWD on March 23, 2021 in response to the letter. The claimant did not dispute the overpayment amount or provide evidence that the wages reported by the employer were inaccurate. The claimant stated she did not report the wages because she was only applying for unemployment benefits as they related to her part time job with Flying Mango and not her full time job with AEA 11.

Claimant received FPUC benefit of \$600 per week from April 5, 2020, to July 25, 2020. Additionally claimant received a \$300 payment for the week ending January 2, 2021. Because the claimant did not accurately report her wages during this same period, an FPUC overpayment of \$9,900.00 was determined by IWD. The agency established the overpayment based on 16 weeks of benefits paid at the \$600.00 per week level and one week at the \$300.00 per week level.

In addition to the overpayment, a 15% penalty was imposed, due to the overpayment arising from the claimant's misrepresentation or intentional omission of wages to collect benefits. The claimant does not dispute the overpayment amount but argued that a penalty should not be imposed because claimant intended to only file against the part time employer. As IWD documents request the name of 'the most recent employer' claimant responded with only the name of Flying Mango. Although the monetary record created by IWD in response to claimant's filing indicated wages from her part time job at Flying Mango and her full time job at AEA 11, claimant interpreted her subsequent weekly reports request for 'all wages' to only include those wages earned from the part time job against whom she (mistakenly) believed she was solely filing.

Claimant is certainly not alone in misinterpreting the information contained in IWD documents. Claimant forwarded information and Daniel Noonan testified that there are many other fraud cases working through the system at this time – although he indicated that they may not be proportionately out-of-line when compared to the extremely large number of cases filed. Noonan stated that claimant was assessed the penalty because she made the mistake repeatedly over the 26 weeks included in this matter and an additional 13 weeks of PEUC-based claims. Noonan also argued that claimant is educated and she makes a large wage at her full time job. Lastly, Noonan stated that claimant could not reasonably have thought that her part time job paying less than \$200/week would yield \$481.00/week in unemployment benefits (not including the FPUC and LWAP additional monies).

Claimant's attorney requested that the hearings in these matters be held in person. The matters were held telephonically as all hearings were moved to telephonic at the beginning of the pandemic and in person hearings have not resumed at this time.

REASONING AND CONCLUSIONS OF LAW:

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 except that the State agency may waive such repayment if it determines that

(A) the payment of such FPUC was without fault on the part of any such individual; and

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

Here, the claimant was found to be disqualified from receiving regular unemployment insurance (UI) benefits in 21A-UI-09898-B2-T. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation (FPUC). The claimant was overpaid \$9,900.00 in Federal Pandemic Unemployment Compensation (FPUC). Federal law PL116-136, Sec. 2104 does not provide an avenue through which a penalty may be assessed. Therefore, no penalty needs to be examined.

DECISION:

The unemployment insurance decision dated March 23, 2021, (reference 04), is affirmed. The claimant was overpaid \$9,900.00 in Federal Pandemic Unemployment Compensation (FPUC).



Blair A. Bennett
Administrative Law Judge

July 7, 2021
Decision Dated and Mailed

bab/lj

NOTE TO CLAIMANT:

- This decision determines you have been overpaid FPUC benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first 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.