

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

RODOLFO V CISCATO
Claimant

APPEAL NO. 22A-UI-18235-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 04/19/20
Claimant: Appellant (4)

P.L. 116-136, § 2107 – Pandemic Emergency Unemployment Compensation
Iowa Code Section 96.1A(37) – Temporary & Partial Unemployment
Iowa Code Sections 96.16(4) & 96.5(8) – Misrepresentation and Fraud

STATEMENT OF THE CASE:

On October 22, 2022, Rodolfo Ciscato (claimant) filed a timely appeal from the October 12, 2022 (reference 04) decision that held he was overpaid \$4,508.00 in PEUC benefits for 13 weeks between August 23, 2020 and November 21, 2020, based on the investigator's conclusion the claimant failed to report wages or incorrectly reported wages earned with The Planetary Gems Company. The reference 04 decision imposed a 15% penalty and an additional administrative penalty, based on the investigator's conclusion the claimant misrepresented his wages. After due notice was issued, the appeal hearing began on November 14, 2022. The hearing concluded on December 1, 2022. The claimant participated on both dates. Kara Harrison, Investigator II with Iowa Workforce Development Investigations and Recovery Unit, represented Iowa Workforce Development on both dates. There were five appeal numbers set for a consolidated hearing: 22A-UI-18232-JT-T, 22A-UI-18233-JT-T, 22A-UI-18234-JT-T, 22A-UI-18235-JT-T and 22A-UI-18236-JT-T. IWD Exhibits A1 through D1 and claimant Exhibits 1, 2 and 3 were received into evidence at the time of the hearing. The administrative law judge requested the claimant's 2020 income tax return, which the claimant provided and which was received into evidence as Exhibit 4. The administrative law judge took official notice of the following Agency administrative records: DBIN, KPYX, and WAGE-B.

ISSUES:

Whether the claimant was partially and/or temporarily unemployed during the period between August 23, 2020 and November 21, 2020.

Whether the claimant was overpaid \$4,508.00 in PEUC benefits for 13 weeks between August 23, 2020 and November 21, 2020

Whether the claimant is subject to a 15 percent penalty and additional administrative penalty, based on an allegation of fraud and/or misrepresentation.

FINDINGS OF FACT:

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

Rodolfo Ciscato (claimant) established an original claim for benefits that was effective April 19, 2022. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$434.00. Mr. Ciscato made weekly claims for each of the 33 consecutive weeks between April 19, 2022 and December 5, 2020. For each week, Mr. Ciscato reported that he had worked during the benefit week and that the work was self-employment. Based on these two weekly responses, the Iowa Workforce Development weekly reporting system did not prompt Mr. Ciscato to report weekly wages and did not provide an opportunity to report weekly wages. Instead, the IWD weekly claim reporting system changed Mr. Ciscato's responses to two weekly questions to make it look like Mr. Ciscato reported he had was not employed each claim week and like he had intentionally reported zero earned wages. Mr. Ciscato did not knowingly or intentionally omit or otherwise misrepresent his earned wages during any of the weeks involved in the claim.

Mr. Ciscato received \$434.00 in regular benefits for each of the 17 weeks between April 19, 2020 and August 15, 2020. Mr. Ciscato received one more week of partial regular benefits, \$288.67, for the week ending August 22, 2020. Mr. Ciscato then received \$434.00 in Pandemic Emergency Unemployment Compensation (PEUC) benefits for each of the 13 weeks between August 23, 2020 and November 21, 2020. Mr. Ciscato received PEUC benefits totaling \$5,642.00.

Mr. Ciscato also received \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for each of the 14 weeks between April 19, 2020 and July 25, 2020. Mr. Ciscato's eligibility for the FDUC benefits depended on Mr. Ciscato being eligible for regular benefits for the same week.

Mr. Ciscato also received \$300.00 in Lost Wages Assistance Program (LWAP) benefits for each of the six weeks between July 26, 2022 and September 5, 2022. Mr. Ciscato's eligibility for the LWAP benefits depended on him being eligible for regular benefits or PEUC benefits for the same week.

Mr. Ciscato has at all relevant times owned and operated The Planetary Gems Company, a jewelry design and Internet jewelry sales business. The business is an S Corporation. Mr. Ciscato is President of the company and the company's sole employee. Mr. Ciscato generally works full-time, but does not track his daily or weekly work hours. As the employer, Mr. Ciscato made quarterly wage reports to Iowa Workforce Development to report the wages he paid himself during each quarter, as follows:

<u>QUARTER WAGES</u>	
2019/1	5,000.00
2019/2	10,000.00
2019/3	5,000.00
2019/4	3,000.00
2020/1	3,000.00
2020/2	5,000.00
2020/3	10,000.00
2020/4	5,000.00

Mr. Ciscato pays himself a quarterly lump-sum salary.

At three points, Iowa Workforce Development audited a portion of the period involved in the claim. In January 2021, IWD sent a Request of Wages to the employer regarding wages earned during the 14-week period of June 28, 2020 through October 3, 2020. Mr. Ciscato, as

the employer, reported that he earned \$599.61 for the week that ended July 4, 2020, that he earned \$760.83 for each of the weeks between July 5, 2020 and September 26, 2020, and that he earned \$597.78 for the week ending October 3, 2020. Mr. Piscato, as employer, reported weekly work hours between 25 and 30. The wages earned during each of the 14 weeks between June 28, 2020 and October 3, 2020 exceeded the \$434.00 weekly benefit amount plus \$15.00. See Exhibit A2-2.

In April 2021, IWD sent a Request of Wages to the employer, regarding wages earned during the eight-week period of September 27, 2020 and November 21, 2020. The first week of the audited period had also been the last week of the previously audited period. Mr. Piscato, as employer, reported that earned \$597.78 for the week ending October 3, 2020 and that he earned \$380.38 for each of the seven weeks between October 4, 2020 and November 21, 2020. Mr. Piscato, as employer, reported he worked 30 hours during each of the audited weeks. See Exhibit A2-3.

In June 2022, IWD sent a Request of Wages to the employer regarding the 10-week period between April 19, 2020 and June 27, 2020. Mr. Piscato, as employer, reported that he earned \$384.65 during each week of the audited period. Mr. Piscato, as employer, reported that he worked 27 hours during the first two weeks and 28 hours for the remaining weeks of the audited period. See Exhibit A2-1.

In October 2022, Kara Harrison, IWD Investigator, investigated the ostensible disparity between the weekly claim reports and the information Mr. Piscato, as employer, provided in response to the Requests of Wages. The investigation included an interview with Mr. Piscato. The investigator redetermined the claimant's eligibility for benefits for each of the audited weeks. The investigator accurately concluded that all of the wages reported in response to the Request of Wages were deductible from unemployment insurance benefits. The investigator concluded the claimant was overpaid \$6,390.00 in regular benefits for weeks between April 29, 2020 and August 22, 2022. However, due to a typographical error, the investigator erroneously assigned \$3,894.00 in wages to the week ending May 30, 2020, rather than the correct \$384.00 rounded amount. The typographical error led to an overstatement of overpayment amount for the week ending May 30, 2020. The overpayment amount for that week was \$276.00, not \$434.00, which reduces the total overpayment amount regarding regular benefits by \$158.00 to \$6,232.00. Because the earned wages for the four weeks between June 28, 2020 and July 25, 2020 rendered the claimant ineligible for regular benefits, the investigator concluded the claimant was also not eligible for FPUC for those weeks. Due to the typographical error regarding the wages earned during the week ending May 30, 2020, the investigator erroneously concluded the claimant was not eligible for FPUC benefits for that week. See Exhibits C2 and C4. Because the wages earned during the four weeks between July 26, 2020 and August 22, 2020 rendered the claimant ineligible for regular benefits for those weeks, the investigator concluded the claimant was also not eligible for LWAP benefits for those four weeks. See Exhibit C2 and C6.

In October 2022, the IWD investigator's redetermination of the claimant's benefit eligibility included redetermination of his eligibility for the PEUC benefits the claimant received for each of the 13 weeks between August 23, 2020 and November 21, 2020. Because the wages earned during each of the six weeks between August 23, 2020 and October 3, 2022 exceeded the \$434.00 weekly benefit amount plus \$15.00, the investigator concluded the claimant was not eligible for PEUC benefits for those weeks. Based on the wages earned during each of the seven weeks between October 4, 2020 and November 21, 2020, the deputy determined the claimant was overpaid \$272.00 for each of those weeks. The total PEUC overpayment for the 13 weeks between August 23, 2020 and November 21, 2020 was \$4,508.00. See Exhibit C8. Because the claimant was ineligible for PEUC benefits for the weeks ending August 29 and

September 5, 2020, the investigator also concluded the claimant was not eligible for LWAP for those weeks. See Exhibit C6 and C8.

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 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 96.1A(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 individual 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 evidence in the record establishes the claimant was overpaid \$434.00 in PEUC benefits for each of the six weeks between August 23, 2020 and October 3, 2020. During each of those weeks the claimant's earned wages exceeded the weekly benefit amount plus \$15.00. The claimant was not partially unemployed within the meaning of the law for any of those weeks and, therefore, not eligible for the PEUC benefits he received for those weeks. The total PEUC overpayment for the six weeks between August 23, 2020 and October 3, 2020 is \$2,604.00.

The evidence in the record establishes the claimant was overpaid \$272.00 in PEUC benefits for each of the seven weeks between October 4, 2020 and November 21, 2020. During each of those weeks, the claimant worked reduced hours and the claimant's earned wages were less than the \$434.00 weekly benefit amount plus \$15.00. During each of those weeks, the claimant was partially unemployed within the meaning of the law. The claimant was eligible for \$162.00 in reduced benefits for each of those weeks, provided the claimant was otherwise eligible. The Total PEUC overpayment for the seven weeks between October 4, 2020 and November 21, 2020 was \$1,904.00.

The total PEUC overpayment of regular benefits for the 13 weeks between August 23, 2020 and November 21, 2020 was \$4,508.00. The claimant must repay the overpaid PEUC benefits, unless the claimant applies for and is approved for waiver of repayment of the PEUC overpayment. See below.

Iowa Code section 96.16(4)(a) and (b) provides:

Misrepresentation.

a. An individual who, by reason of the nondisclosure or misrepresentation by the individual or by another of a material fact, has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in the individual's case, or while the individual was disqualified from receiving benefits, shall be liable to repay to the department for the unemployment compensation fund, a sum equal to the amount so received by the individual. If the department seeks to recover the amount of the benefits by having the individual pay to the department a sum equal to that amount, the department may file a lien with the county recorder in favor of the state on the individual's property and rights to property, whether real or personal. The amount of the lien shall be collected in a manner similar to the provisions for the collection of past-due contributions in section 96.14, subsection 3.

b. The department shall assess a penalty equal to fifteen percent of the amount of a *fraudulent* overpayment. The penalty shall be collected in the same manner as the overpayment. The penalty shall be added to the amount of any lien filed pursuant to paragraph "a" and shall not be deducted from any future benefits payable to the individual under this chapter. Funds received for overpayment penalties shall be deposited in the unemployment trust fund.

[Emphasis added]

Iowa Admin. Code r. 871- 25.1 provides:

Definitions.

“Fraud” means the *intentional* misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself or another or to avoid the verification and payment of employment security taxes; a false representation of a matter of fact, whether by statement or by conduct, by false or misleading statements or allegations; or by the concealment or failure to disclose that which should have been disclosed, which deceives and *is intended to deceive another* so that they, or the department, shall not act upon it to their, or its, legal injury.

“Misrepresentation” means to give misleading or deceiving information to or omit material information; to present or represent in a manner at odds with the truth.

[*Emphasis added.*]

Iowa Code section 96.5(8) provides:

Administrative penalty. If the department finds that, with respect to any week of an insured worker's unemployment for which such person claims credit or benefits, such person has, within the thirty-six calendar months immediately preceding such week, with intent to defraud by obtaining any benefits not due under this chapter, willfully and knowingly made a false statement or misrepresentation, or willfully and knowingly failed to disclose a material fact; such person shall be disqualified for the week in which the department makes such determination, and forfeit all benefit rights under the unemployment compensation law for a period of not more than the remaining benefit period as determined by the department according to the circumstances of each case. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter.

Iowa Code section 96.5(13) provides:

Overpayment resulting in disqualification. If the department finds that an individual has received benefits by reason of misrepresentation pursuant to section 96.16, such individual shall be disqualified for benefits until the balance of the benefits received by the individual due to misrepresentation, including all penalties, interest, and lien fees, is paid in full.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The claimant did not omit or underreport wages. Rather, the Iowa Workforce Development weekly claims system did not solicit wage information and, further, prevented the claimant from reporting wage information. There was no fraud or misrepresentation. Neither the 15 percent penalty nor the additional administrative penalties apply.

DECISION:

The from the October 12, 2022 (reference 04) decision is MODIFIED in favor of the claimant/appellant as follows. The claimant was overpaid \$434.00 in PEUC benefits for each of the six weeks between August 23, 2020 and October 3, 2020. During each of those weeks the claimant's earned wages exceeded the weekly benefit amount plus \$15.00. The claimant was not partially unemployed within the meaning of the law for any of those weeks and, therefore, not eligible for the PEUC benefits he received for those weeks. The total PEUC overpayment for the six weeks between August 23, 2020 and October 3, 2020 is \$2,604.00.

The claimant was overpaid \$272.00 in PEUC benefits for each of the seven weeks between October 4, 2020 and November 21, 2020. During each of those weeks, the claimant was partially unemployed within the meaning of the law. The claimant was eligible for \$162.00 in reduced benefits for each of those weeks, provided the claimant was otherwise eligible. The Total PEUC overpayment for the seven weeks between October 4, 2020 and November 21, 2020 was \$1,904.00.

The total PEUC overpayment of regular benefits for the 13 weeks between August 23, 2020 and November 21, 2020 was \$4,508.00. The claimant must repay the overpaid PEUC benefits, unless the claimant applies for and is approved for waiver of repayment of the PEUC overpayment. See below.

This was no fraud or misrepresentation. Neither the 15 percent penalty nor the additional administrative penalties apply.



James E. Timberland
Administrative Law Judge

December 12, 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
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>.

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.