

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

DONAI MARKS
Claimant

KANDK INC
Employer

APPEAL NO. 22A-UI-17188-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/01/20
Claimant: Appellant (4)**

P.L. 116-136, §2104 – Federal Pandemic Unemployment Compensation Overpayment

STATEMENT OF THE CASE:

On September 15, 2022, Donai Marks (claimant) filed a timely appeal from the September 7, 2022 (reference 02) decision that held she was overpaid \$1,200.00 in Federal Pandemic Unemployment Compensation (FPUC) for four weeks between December 27, 2020 and February 6, 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 overpaid FPUC benefits for the period between December 27, 2020 and February 6, 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. The claimant made weekly claims that included weekly claims for each of the six weeks between December 27, 2020 and February 6, 2021 and received regular benefits for each of those six weeks. In connection with her receipt of regular state benefits for the six weeks between December 27, 2020 and February 6, 2021, the claimant also received \$300.00 in Federal Pandemic Unemployment Compensation (FPUC) for each of the six weeks between December 27, 2020 and February 6, 2021. The claimant's eligibility for the \$300.00 in FPUC weekly benefits depended on her eligibility for regular benefits for the same week.

During the weeks that ended January 9, 2021 and January 16, 2021, the claimant did not meet the able and available requirements and was not eligible for regular state benefits. See Appeal Number 22A-UI-17187-JT-T. During the weeks that ended January 2, January 23, January 30, and February 6, 2021, the claimant was able and available work, partially unemployed, and eligible for partial regular benefits, provided she was otherwise eligible. See Appeal Number

22A-UI-17187-JT-T. Though the claimant underreported her wages for the weeks ending January 2, January 30, and February 6, 2021, the claimant remained eligible for adjusted partial regular benefits, provided she was otherwise eligible. See Appeal Number 22A-UI-17187-JT-T.

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 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.

(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 Federal Pandemic Unemployment Compensation payable to such individual 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 Federal Pandemic 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.

Because the claimant was not eligible for regular benefits for the weeks ending January 9 and January 16, 2021, she was also not eligible for FPUC benefits for those weeks. The claimant was overpaid \$600.00 in FPUC benefits for the two weeks between January 3, 2021 and January 16, 2021. The claimant must repay the overpaid FPUC benefits unless she applies for and is approved for waiver of repayment of FPUC benefits. See below.

Because the claimant was deemed eligible for regular benefits for the weeks ending January 2, January 23, January 30, and February 6, 2021, provided she met all other eligibility requirements, she was also eligible for the FPUC benefits she received for those four weeks, provided she was otherwise eligible. Accordingly, there is no FPUC overpayment for the weeks ending January 2, January 23, January 30, and February 6, 2021.

DECISION:

The September 7, 2022 (reference 02) decision is MODIFIED in favor of the claimant as follows. Because the claimant was not eligible for regular benefits for the weeks ending January 9 and January 16, 2021, she was also not eligible for FPUC benefits for those weeks. The claimant was overpaid \$600.00 in FPUC benefits for the two-weeks between January 3, 2021 and January 16, 2021. The claimant must repay the overpaid FPUC benefits unless she applies for and is approved for waiver of repayment of FPUC benefits. See below.

Because the claimant was deemed eligible for regular benefits for the weeks ending January 2, January 23, January 30, and February 6, 2021, provided she meets all other eligibility requirements, she was also eligible for the FPUC benefits she received for those four weeks, provided she was otherwise eligible. Accordingly, there is no FPUC overpayment for the weeks ending January 2, January 23, January 30, and February 6, 2021



James E. Timberland
Administrative Law Judge

October 31, 2022
Decision Dated and Mailed

mh

Note to Claimant: This decision determines you have been overpaid FPUC benefits for the two weeks ending January 9 and January 16, 2021. 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 FPUC overpayment can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment>. If this decision becomes final and you are not eligible for a FPUC waiver, you will have to repay the overpaid FPUC benefits.

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.