

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEPHEN P KIRBY
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 21A-UI-21552-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/04/21
Claimant: Appellant (4)**

PL 116-136 Section 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:

The claimant/appellant filed an appeal from the October 11, 2021 (reference 06) Iowa Workforce Development (“IWD”) unemployment insurance decision that found claimant was overpaid FPUC benefits of \$2,700.00 during the weeks between April 4, 2021 and June 5, 2021 because claimant failed to report wages earned with Wells Fargo Bank, N.A. IWD did not impose a 15% administrative penalty due to fraud in the decision; however, the decision stated that an administrative penalty will be assessed due to misrepresentation.

The parties were properly notified of the hearing. A telephone hearing was held on December 14, 2021. The claimant participated personally and was represented by Attorney Marlon Mormann. Kendra Mills participated as a witness on behalf of IWD and Attorney Jeffrey Koncsol represented IWD. Claimant’s Exhibits A through F were admitted. IWD Exhibits 1 through 12 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records. The parties waived due notice of the issues of whether the penalties were properly imposed pursuant to Iowa Code § 96.16(4). This hearing was consolidated with Appeal No. 21A-UI-21541-DB-T; 21A-UI-21545-DB-T; 21A-UI-21548-DB-T; 21A-UI-21549-DB-T; and 21A-UI-21551-DB-T. Official notice was taken of the hearing record in Appeal No. 21A-UI-14682-AW-T.

ISSUES:

Did IWD correctly determine that claimant was overpaid FPUC benefits and was the overpayment amount correctly calculated?
Are any fraudulent overpayment penalties properly imposed?

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. His weekly benefit amount was \$481.00 based upon the wages reported in his base period. Claimant filed weekly-continued claims beginning April 5, 2020 through April 3, 2021 during that claim year. He received regular unemployment insurance benefits funded by the

State of Iowa in the amount of \$12,506.00 from April 5, 2020 through October 3, 2020, which was his maximum benefit amount for the claim year.

Effective October 4, 2020 through April 3, 2021, he received \$12,506.00 in Federal Pandemic Emergency Unemployment Compensation (PEUC) benefits at the weekly-benefit amount of \$481.00. His claim year expired effective April 3, 2021 and claimant filed an application for benefits in a second claim year effective April 4, 2021.

During the April 5, 2020 claim year, the claimant received supplemental Federal Pandemic Unemployment Compensation (FPUC) benefits beginning April 5, 2020 through April 3, 2021 in the amount of \$13,800.00. The supplemental benefits were paid to him first as a supplement to his regular unemployment insurance benefits and then as a supplement to his PEUC benefits.

During his April 5, 2020 claim year, claimant also received Lost Wages Assistance (LWA) benefits of \$1,800.00 for the weeks between July 26, 2020 and September 5, 2020. Those LWA benefits were paid to the claimant as a supplement to his regular unemployment insurance benefits he was receiving at that time.

Claimant's weekly-benefit amount established during his second benefit year was \$493.00. He received regular unemployment insurance benefits from April 4, 2021 through June 5, 2021 in the total amount of \$4,437.00. He also received FPUC benefits of \$2,700.00 for the weeks of April 4, 2021 through June 5, 2021 as a supplement to his regular unemployment insurance benefits.

In June of 2021, a fact-finding interview was conducted regarding the claimant's employment status with Wells Fargo Bank N.A. A decision was issued denying the claimant benefits as he was still employed with Wells Fargo Bank N.A. That decision was appealed and a hearing was held with Administrative Law Judge (ALJ) Williamson. A decision was issued by ALJ Williamson finding that the claimant was denied benefits effective his current claim date of April 4, 2021. See Appeal No. 21A-UI-14682-AW-T. The Employment Appeal Board (EAB) affirmed the denial decision. See Appeal No. 21B-UI-14682-EAB.

The claimant began working for Wells Fargo Bank, N.A. in February of 2001 and has remained employed there to date as a full-time mortgage analyst. Prior to filing his original claim for benefits effective April 5, 2020, the claimant was working part-time hours at Rube's Steakhouse as a server. Rube's Steakhouse closed due to the COVID-19 pandemic and the claimant was not working his part-time job when he filed his claim for benefits effective April 5, 2020. Claimant never returned to Rube's Steakhouse in his part-time position.

Claimant believed that he was filing for unemployment benefits "against" Rube's Steakhouse only and not his current employer, Wells Fargo Bank N.A. Claimant reviewed the claimant's handbook online to ensure that he was filing his claims correctly. Claimant filed weekly-continued claims from April 5, 2020 through June 5, 2021 and did not report any of his wages earned with Wells Fargo Bank N.A. Claimant did not report any wages earned with Wells Fargo Bank N.A. each week because he believed that the handbook instructed him to report wages earned with Rube's Steakhouse only, which amounted to \$0.00.

Claimant's administrative records establish that no fact-finding interviews were conducted with the claimant or any employers during his April 5, 2020 claim year. When Wells Fargo Bank N.A. protested the April 4, 2021 notice of claim, the case was forwarded to IWD Investigations and Recovery Unit for review. Investigator Kendra Mills conducted an audit and confirmed that the claimant had worked and earned full-time wages from Wells Fargo Bank N.A. for the weeks in which the claimant filed weekly-continued claims for benefits, except for the week-ending February 13, 2021, for which Wells Fargo Bank N.A. did not provide any information for. See Exhibit 3-11 through 3-14.

Claimant testified that he worked full-time hours for Wells Fargo Bank N.A. and/or earned his regular full-time wages for each of the weeks in which he filed weekly-continued claims for benefits. The gross wages the claimant earned each week for which he filed weekly-continued claims for benefits during his April 5, 2020 and April 4, 2021 claim years exceeded his weekly-benefit amounts, plus \$15.00.

Investigator Mills scheduled an interview for October 8, 2021; however, the claimant did not participate in the interview. When the claimant filed his initial application for benefits effective April 5, 2020, he listed Wells Fargo Bank N.A. as his current employer and noted that he remained employed full-time for that employer. Claimant believed that IWD knew he was still working full-time for Wells Fargo Bank N.A. because he listed that information on his original application for benefits. When claimant filed weekly claims each week and was asked whether he was working, he believed that question pertained to his position at Rube's and not his position at Wells Fargo Bank. N.A. Claimant attempted to contact IWD on three separate occasions by telephone; however, was unable to reach anyone after waiting on hold for over an hour each time.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.3(7) provides, in pertinent part:

Payment — determination — duration — child support intercept.

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.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

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.

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...

If the claimant would have properly reported his wages earned from Wells Fargo Bank N.A., he would not have been paid any regular unemployment insurance benefits for each of the weeks in which he filed his weekly-continued claims for benefits from April 4, 2021 through June 5, 2021 because those gross wages exceeded his weekly-benefit amount, plus \$15.00 each week. Because the claimant was not eligible for regular unemployment insurance benefits for any of the weeks in which he filed weekly-continued claims from April 4, 2021 through June 5, 2021, he was also not eligible for the supplemental FPUC payments for those weeks.

As such, the amount of overpayment determined of \$2,700.00 in FPUC benefits for the weeks between April 4, 2021 and June 5, 2021 was correct. The next issue is whether the claimant engaged in fraud when he failed to report correct earnings from Wells Fargo Bank, N.A. and whether a penalty should be imposed.

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

Offenses

4. 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).

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).

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.*

Claimant credibly testified that he did not believe that he needed to report the wages earned with Wells Fargo Bank, N.A. because he was “filing against” his other employer. Claimant read the claimant handbook and reported on his application that he was still employed with Wells Fargo Bank, N.A. There was no evidence established that the claimant intentionally misused facts to gain an increase in benefits or that he concealed material information for which he intended to deceive IWD. There was no evidence established that the claimant knowingly made a false statement or knowingly failed to disclose a material fact. Claimant’s actions were not intentional. As such, any penalty or threat of additional penalties due to the finding of a fraudulent overpayment was not properly imposed and shall be removed.

Pursuant to PL 116-136 Section 2104(F)(2) of the CARES Act, the claimant may request a waiver of the overpayment of FPUC benefits. The request for waiver should be sent to:

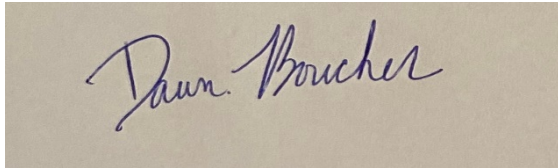
Iowa Workforce Development
Overpayment Waiver Request
1000 East Grand Avenue
Des Moines, Iowa 50319

The request for waiver of overpayment should include the claimant’s name, address, decision number and date of decision, dollar amount of overpayment requested for waiver, and all

relevant facts the claimant feels would justify a waiver of the overpayment balance. The claimant may also visit <https://www.iowaworkforcedevelopment.gov/application-overpayment-waiver>.

DECISION:

The October 11, 2021 (reference 06) unemployment insurance decision is modified in favor of the appellant. The claimant is overpaid FPUC benefits in the amount of \$2,700.00 for the weeks between April 4, 2021 and June 5, 2021 and is required to repay the agency this overpayment balance unless a waiver is requested and granted. The claimant did not engage in fraud and any administrative penalty due to fraud shall be removed.

A handwritten signature in blue ink on a light brown background. The signature reads "Dawn Boucher" in a cursive script.

Dawn Boucher
Administrative Law Judge

December 30, 2021
Decision Dated and Mailed

db/db