

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEPHEN P KIRBY
Claimant

APPEAL 21A-UI-21548-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 04/05/20
Claimant: Appellant (4)

Iowa Code §96.3(7) – Overpayment of Benefits – Lost Wages Assistance (LWA)
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 03) Iowa Workforce Development (“IWD”) unemployment insurance decision that found claimant was overpaid LWA benefits of \$1,800.00 during the weeks between July 26, 2020 and September 5, 2020 because claimant failed to report wages earned with Wells Fargo Bank, N.A. A 15% administrative penalty due to fraud was imposed in the decision.

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-21549-DB-T; 21A-UI-21551-DB-T; and 21A-UI-21552-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 LWA 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.

It is undisputed that the claimant earned weekly gross wages, vacation pay, or holiday pay above his weekly-benefit amount, plus \$15.00, each week for his work at Wells Fargo Bank, N.A. These earnings were reportable for the purposes of deductibility from unemployment insurance benefits; however, the claimant failed to report these wages earned.

Iowa Admin. Code r. 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 deductions 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.

This rule is intended to implement Iowa Code § 96.3, 96.4 and 96.19(38)(now 96.1A(37)).

On August 8, 2020, President Trump issued a memorandum to provide additional financial assistance to those individuals receiving unemployment benefits that met the eligibility requirements of the program through a grant from FEMA. The LWA program required claimants to be eligible for a weekly benefit amount of at least \$100.00 and the LWA payment was made to claimants in combination with a payment of at least \$1.00 in benefits stemming from either State of Iowa funded unemployment insurance benefits, Federal Pandemic Emergency Unemployment Compensation (PEUC) benefits program, Pandemic Unemployment Assistance (PUA) program, Extended Benefits program, Voluntary Shared Work program, Short Term Compensation program, or Trade Act benefits program. The weekly benefit amount of the LWA program was \$300.00 and it ran from July 26, 2020 through September 5, 2020. Therefore, if a claimant was not eligible for weekly benefits from an underlying program, they were not eligible for LWA benefits as a weekly supplemental benefit.

The *Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019* provided in pertinent part:

Sec 4. Assistance Program for Lost Wages.

- (a) For purposes of this memorandum, "State" includes the territories and the District of Columbia, and "Governor" includes the chief executive thereof.
- (b) To help meet the needs of the American people during this unprecedented and continuously evolving public health crisis, the Secretary of Homeland Security (Secretary), acting through the FEMA Administrator, is authorized to make available other needs assistance for lost wages, in accordance with section 408(e)(2) of the Stafford Act (42 U.S.C. 5174(e)(2)) ("lost wages assistance"), to the people of a State, including the members of any tribe residing therein, if the Governor requests lost wages assistance and agrees to administer delivery and provide adequate oversight of the program, for a major disaster I declared pursuant to section 401 of the Stafford Act (42 U.S.C. 5170) for COVID-19, under the following conditions:
 - (i) the Governor requests from the FEMA Administrator a grant for lost wages assistance pursuant to 42 U.S.C. 5174(f)(1)(A) and agrees to the cost-sharing requirement of 42 U.S.C. 5174(g)(2); and
 - (ii) the Governor administers delivery of financial assistance for lost wages in conjunction with the State's unemployment insurance system.
- (c) In exercising this authority, the Secretary, acting through the FEMA Administrator, shall, subject to the limitations above, approve a lost wages assistance program that authorizes the Governor to provide a \$400 payment per week, which shall reflect a \$300 Federal contribution, to eligible claimants from the week of unemployment ending August 1, 2020.
- (d) For purposes of this memorandum, the term "Eligible claimants" means claimants who:

- (i) receive, for the week lost wages assistance is sought, at least \$100 per week of any of the following benefits:
 - (A) Unemployment compensation, including Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-Service members (UCX), under section 8501 of title 5, United States Code;
 - (B) Pandemic Emergency Unemployment Compensation (PEUC), under section 2107 of the CARES Act;
 - (C) Pandemic Unemployment Assistance (PUA), under section 2102 of the CARES Act;
 - (D) Extended Benefits (EB), under section 3304 of title 26, United States Code;
 - (E) Short-Time Compensation (STC), under section 3306(v) of title 26, United States Code;
 - (F) Trade Readjustment Allowance (TRA), under sections 2291 through 2293 of title 19, United States Code; and
 - (G) Payments under the Self-Employment Assistant (SEA) program, under section 3306(t) of title 26, United States Code; and
- (ii) provide self-certification that the claimant is unemployed or partially unemployed due to disruptions caused by COVID-19.
- (e) The authority vested in the Secretary, acting through the FEMA Administrator, to approve lost wages assistance shall not be construed to encompass authority to approve other forms of assistance.

The state is responsible for refunding to FEMA any unobligated balances that FEMA paid that are not authorized to be retained per 2 C.F.R. 200.343(d) and the state is also responsible for recovering assistance awards from claimants obtained fraudulently. See UIPL No. 27-20 Change 1 dated August 17, 2020 citing 44 C.F.R. 206.120(f)(4 and 5).

44 C.F.R. § 206.16 provides as follows:

- (a) The applicant must agree to repay to FEMA (when funds are provided by FEMA) and/or the State (when funds are provided by the State) from insurance proceeds or recoveries from any other source an amount equivalent to the value of the assistance provided. In no event must the amount repaid to FEMA and/or the State exceed the amount that the applicant recovers from insurance or any other source.
- (b) An applicant must return funds to FEMA and/or the State (when funds are provided by the State) when FEMA and/or the State determines that the assistance was provided erroneously, that the applicant spent the funds inappropriately, or that the applicant obtained the assistance through fraudulent means.

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 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 between July 26, 2020 and September 5, 2020 in which he filed weekly-continued claims, he was also not eligible for the supplemental LWA payments for those six weeks ending September 5, 2020.

As such, the amount of overpayment amount determined of \$1,800.00 in LWA benefits for the six weeks ending September 5, 2020 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.

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).

42 U.S.C. Section 503(a)(11) provides in pertinent part:

The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act (26 U.S.C.A. § 3301 et seq.) includes provisions for –

(11)(A) At the time the State agency determines an erroneous payment from its unemployment fund was made to an individual due to **fraud** committed by such

individual, the assessment of a penalty on the individual in an amount not less than 15 percent of the amount of the erroneous payment; and

(B) The immediate deposit of all assessments paid pursuant to subparagraph (A) into the unemployment fund of the State.

(emphasis added).

While the August 8, 2020, *Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019* signed by President Trump does not specifically address that states may assess a penalty due to fraud on any overpayment of LWA benefits, 42 U.S.C. § 503(a)(11)(A) provides that the State shall assess a 15% penalty if the State determines an erroneous payment was made due to fraud.

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 due to the finding of a fraudulent overpayment was not properly imposed and shall be removed.

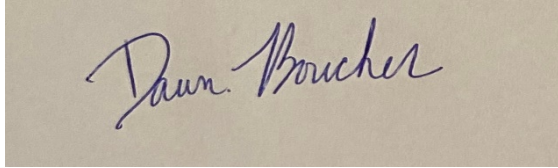
The claimant may request a waiver of the overpayment of LWA benefits. The request for waiver should be sent to:

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 03) unemployment insurance decision is modified in favor of the appellant. The claimant is overpaid LWA benefits in the amount of \$1,800.00 for the weeks between July 26, 2020 and September 5, 2020 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 rectangular box containing a handwritten signature in blue ink. The signature is written in a cursive style and reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

December 30, 2021
Decision Dated and Mailed

db/db