

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CYNTHIA S LEHRKAMP
Claimant

APPEAL NO. 22A-UI-11699-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On May 3, 2022, Cynthia Lehrkamp (claimant/appellant) appealed the Iowa Workforce Development (“IWD”) decision dated April 29, 2022 (reference 04) that concluded the claimant was overpaid benefits in the total amount of \$10,420.00 between May 24 and September 19, 2020 based on a prior decision finding claimant ineligible for benefits during that period.

A telephone hearing was held on June 23, 2022. The parties were properly notified of the hearing. Claimant participated personally. Appeal Nos. 22A-UI-11698 and 22A-UI11699 are related and were heard together, forming a single hearing record. Carroll-Kuemper (employer/respondent) was noticed on 22A-UI-11698 and participated by Hearing Rep. Paul Jahnke.

While the issue of whether claimant was overpaid Federal Pandemic Unemployment Compensation was properly listed on the notice of hearing, the relevant provision of law was not listed. The claimant was made aware of this defect and opted to waive it in order to proceed with the hearing as scheduled.

No exhibits were offered or admitted. Official notice was taken of the administrative record.

ISSUE:

Was the claimant overpaid regular, state unemployment insurance benefits (UI)?
Was the claimant overpaid Federal Pandemic Unemployment Compensation (FPUC)?
Was the claimant overpaid Lost Wage Assistance Payments (LWAP)?

FINDINGS OF FACT:

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

The administrative record shows claimant received UI in the amount of \$3,340.00 between May 24 and September 19, 2020; FPUC in the amount of \$5,400.00 between May 24 and July 25, 2020; and LWAP in the amount of \$1,500.00 between July 26 and August 29, 2020. The total amount of benefits paid between May 24 and September 19, 2020 was \$10,240.00

Claimant was subsequently determined to be ineligible for benefits during this period in a decision dated March 30, 2021. That decision remains in force. See 22A-UI-11698-AD-T.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated April 29, 2022 (reference 04) that concluded the claimant was overpaid benefits in the total amount of \$10,420.00 between May 24 and September 19, 2020 based on a prior decision finding claimant ineligible for benefits during that period is AFFIRMED.

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

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. If the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, the employer's account shall not be charged.

PL 116-136, 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.

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 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.

The administrative record shows claimant received UI in the amount of \$3,340.00 between May 24 and September 19, 2020; FPUC in the amount of \$5,400.00 between May 24 and July 25, 2020; and LWAP in the amount of \$1,500.00 between July 26 and August 29, 2020. The total amount of benefits paid between May 24 and September 19, 2020 was \$10,240.00

Claimant was subsequently determined to be ineligible for benefits during this period in a decision dated March 30, 2021. That decision remains in force. See 22A-UI-11698-AD-T.

Because claimant received UI in the amount of \$3,340.00 during a period for which she was later found to be ineligible for benefits, she was overpaid UI in that amount. Because claimant was ineligible for UI during this period she was also ineligible for FPUC and LWAP. She was therefore overpaid FPUC in the amount of \$5,400.00 and LWAP in the amount of \$1,500.00.

The administrative law judge notes the issue of whether claimant was eligible for benefits based on non-educational wage credits was remanded to IWD in 22A-UI-11698 and depending on the outcome of that remand the overpayment amount may be reduced.

The administrative law judge further notes that claimant may wish to apply for a waiver of the federal portions of the overpayment. Further information on how to apply for a waiver is set forth below.

DECISION:

The decision dated April 29, 2022 (reference 04) that concluded the claimant was overpaid benefits in the total amount of \$10,420.00 between May 24 and September 19, 2020 based on a prior decision finding claimant ineligible for benefits during that period is **AFFIRMED**.



Andrew B. Duffelmeyer
Administrative Law Judge

June 29, 2022
Decision Dated and Mailed

abd/abd

Note to Claimant:

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.

If this decision determines you have been overpaid federal pandemic-related benefits you may request a waiver of the overpayment. Instructions for requesting a waiver can be found 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.