

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

AYRIN J. ALEXANDER
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 22A-UI-18561-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (4R)

Iowa Code § 96.3(7) – Overpayment of Benefits
PL 116-136 Sec 2107 – Federal Pandemic Emergency Unemployment Compensation (PEUC)
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Admin. Code r. 871-25.1 – Misrepresentation & Fraud

STATEMENT OF THE CASE:

On November 3, 2022, the claimant/appellant filed an appeal from the October 27, 2022 (reference 05) Iowa Workforce Development (“IWD”) unemployment insurance decision that found claimant was overpaid PEUC benefits in the amount of \$28,690.00 for the weeks between December 6, 2020 and March 27, 2021 because claimant failed to report wages. IWD imposed a 15% administrative penalty due to misrepresentation. The parties were properly notified of the hearing. A telephone hearing was held on November 30, 2022. This hearing was consolidated with Appeals 22A-UI-18558-CS-T; 22A-UI-18559-CS-T; 22A-UI-18560-CS-T; and 22A-UI-18562-CS-T. The claimant participated personally. Kara Harrison participated on behalf of IWD. IWD Exhibits A1, A2, A3, A4, A5, A6, A7, B1, B2, C1, C2, C3, C4, C5, C6, C7, C8, C9, and C10 were admitted. The administrative law judge took official notice of the claimant’s unemployment insurance benefits records.

ISSUES:

- I. Did IWD correctly determine that claimant was overpaid PEUC benefits and was the overpayment amount correctly calculated?
- II. Did IWD properly impose a penalty based upon claimant’s misrepresentation?

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 March 29, 2020. Her weekly benefit amount was \$278.00 based upon the wages reported in her base period.

Claimant filed weekly-continued claims beginning March 29, 2020. Claimant admits she filed for benefits through April 25, 2020 and denies filing for any additional weeks after that week. Claimant initially filed for benefits due to Walmart, Inc.'s COVID policy that prohibited employees from working if they showed a broad array of symptoms. Claimant was sent home from time to time because she was had one of the symptoms the employer prohibited employees from having in order to work. As a result, claimant filed for benefits to supplement the time(s) she was sent home. Claimant stopped working for Walmart Inc. on or about August 6, 2020. (Exhibit A3-1). Claimant began working for The City of Ames on or about July 12, 2020. (Exhibit A3-2). Claimant is a full-time college student and it is unclear whether claimant was a full-time college student at the time she filed for benefits. (See Appeal).

Claimant's administrative record shows continuing weekly claims were filed on her behalf through April 25, 2021. Each weekly payment was deposited into the same back account during the entire claim period. Additionally, each weekly claim was manually entered and no one but claimant had access to her unemployment login information.

Claimant filed weekly-continued claims beginning March 29, 2020 and consecutively each week there after during her benefit year. Claimant received regular unemployment insurance benefits funded by the State of Iowa in the amount of \$7,228.00 from March 29, 2020 through December 5, 2020, when she reached her maximum benefit amount.

Claimant was then paid \$278.00 in weekly Pandemic Emergency Unemployment Compensation (PEUC) benefits for a gross total amount of \$4,448.00 beginning December 6, 2020 through March 27, 2021. Claimant was paid Federal Pandemic Unemployment Compensation (FPUC) benefits as a supplement to her PEUC benefits. These benefits were paid in the weekly amount of \$300.00 per week for the weeks between December 27, 2020 and March 27, 2021.

IWD conducted an audit and discovered claimant was working for Walmart, Inc. and The City of Ames during the weeks in which she filed her weekly-continued claims for benefits. (Exhibits A3-1 and A3-2). IWD sent Walmart, Inc. and The City of Ames a request of wage records for claimant. The employers responded to the request of wage records. (See Exhibits A3-1, A2-2). During the audit Iowa Workforce Development concluded there was a wage discrepancy for the following weeks. (Exhibit C2-1-2).

For the week ending December 12, 2020, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in PEUC benefits. (DBRO). Wage records from The City of Ames establish claimant received \$215.57 in wages. See Exhibit A3-3.

For the week ending December 19, 2020, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in PEUC benefits. (DBRO). Wage records from The City of Ames establish claimant received \$144.58 in wages. See Exhibit A3-3.

For the week ending December 26, 2020, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in PEUC benefits. (DBRO). Wage records from The City of Ames establish claimant received \$135.38 in wages. See Exhibit A3-3.

For the week ending January 2, 2021, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in PEUC benefits. (DBRO). Wage records from The City of Ames establish claimant requested the week off from work. See Exhibit A3-3.

For the week ending January 9, 2021, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in PEUC benefits. (DBRO). Wage records from The City of Ames establish claimant received \$266.06 in wages. See Exhibit A3-3.

For the week ending January 16, 2021, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in PEUC benefits. (DBRO). Wage records from The City of Ames establish claimant received \$178.45 in wages. See Exhibit A3-3.

For the week ending January 23, 2021, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in PEUC benefits. (DBRO). Wage records from The City of Ames establish claimant received \$189.20 in wages. See Exhibit A3-3.

For the week ending January 30, 2021, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in PEUC benefits. (DBRO). Wage records from The City of Ames establish claimant received \$209.72 in wages. See Exhibit A3-3.

For the week ending February 6, 2021, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in PEUC benefits. (DBRO). Wage records from The City of Ames establish claimant received \$291.97 in wages. See Exhibit A3-3.

For the week ending February 13, 2021, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in PEUC benefits. (DBRO). Wage records from The City of Ames establish claimant received \$354.26 in wages. See Exhibit A3-3.

For the week ending February 20, 2021, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in PEUC benefits. (DBRO). Wage records from The City of Ames establish claimant received \$221.83 in wages. See Exhibit A3-3.

For the week ending February 27, 2021, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in PEUC benefits. (DBRO). Wage records from The City of Ames establish claimant received \$359.36 in wages. See Exhibit A3-3.

For the week ending March 6, 2021, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in PEUC benefits. (DBRO). Wage records from The City of Ames establish claimant received \$274.36 in wages. See Exhibit A3-3.

For the week ending March 13, 2021, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in PEUC benefits. (DBRO). Wage records from The City of Ames establish claimant received \$274.07 in wages. See Exhibit A3-3.

For the week ending March 20, 2021, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in PEUC benefits. (DBRO). Wage records from The City of Ames establish claimant received \$154.73 in wages. See Exhibit A3-3.

For the week ending March 27, 2021, claimant reported earning weekly wages of \$0.00. (KCCO). Claimant received \$278.00 in PEUC benefits. (DBRO). Wage records from The City of Ames establish claimant received \$135.38 in wages. See Exhibit A3-3.

Because the claimant did not report her wages IWD found claimant was an overpaid \$28,690.00 from December 6, 2020, through March 27. (Department Exhibit C7). On the record the agency established the amount on the October 27, 2022, decision is incorrect and is a lower amount. The agency established the overpayment based upon the following incorrect state unemployment payments made to the claimant during the March 29, 2020 claim year due to claimant incorrectly reporting her wages: (Department exhibit C8-1)

WEEK ENDING	WAGES REPORTED	WAGES EARNED	BENEFITS PAID	BENEFITS ENTITLED	OVERPAYMENT
12/12/20	\$0.00	\$215.00	\$278.00	\$132.00	\$146.00
12/19/20	\$0.00	\$144.00	\$278.00	\$203.00	\$75.00
12/26/20	\$0.00	\$135.00	\$278.00	\$212.00	\$66.00
01/02/21	\$0.00	\$0.00	\$278.00	\$0.00	\$278.00
01/09/21	\$0.00	\$266.00	\$278.00	\$81.00	\$197.00
01/16/21	\$0.00	\$178.00	\$278.00	\$169.00	\$109.00
01/23/21	\$0.00	\$189.00	\$278.00	\$158.00	\$120.00
01/30/21	\$0.00	\$209.00	\$278.00	\$138.00	\$140.00
02/06/21	\$0.00	\$291.00	\$278.00	\$56.00	\$222.00
02/13/21	\$0.00	\$354.00	\$278.00	\$0.00	\$278.00
02/20/21	\$0.00	\$221.00	\$278.00	\$126.00	\$152.00
02/27/21	\$0.00	\$359.00	\$278.00	\$0.00	\$278.00

03/06/21	\$0.00	\$274.00	\$278.00	\$73.00	\$205.00
03/13/21	\$0.00	\$274.00	\$278.00	\$73.00	\$205.00
03/20/21	\$0.00	\$154.00	\$278.00	\$193.00	\$85.00
03/27/21	\$0.00	\$135.00	\$278.00	\$212.00	\$66.00
			SUBTOTAL		\$2,622.00

In addition to the overpayment, a 15% penalty was imposed to the overpayment. IWD sent claimant a notice they had audited her unemployment claim and requested a response from her by October 25, 2022. (Exhibit A4). Claimant did not receive the notice because it was sent to the wrong address. As a result claimant did not respond to the notice. IWD imposed the administrative penalty due to claimant not responding and due to failing to report wages when she had earned wages from her employer.

The online handbook for claimants provides that "you must report all gross wages and all gross earnings on the weekly claim." See Exhibit B1-5. It further states that "wages are reported when earned, not when paid." See Exhibit B1-5. Claimant testified she read the Claimant Handbook when she filed her initial application for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes IWD incorrectly calculated the claimant's overpayment of PEUC benefits. The 15% penalty due to fraud was properly imposed.

Iowa Code section 96.19(38) 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.

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).

Iowa Admin. Code r. 871-24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

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

7. Recovery of overpayment of benefits.

Recovery of overpayment of benefits. 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 division of job service 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 division a sum equal to the overpayment.

PL 116-136 Sec 2107 provides in pertinent part:

PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION.

(a) FEDERAL-STATE AGREEMENTS. –

(2) PROVISIONS OF AGREEMENT. —Any agreement under paragraph (1) shall provide that the State agency of the State will make payments of pandemic emergency unemployment compensation to individuals who—

A) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before July 1, 2019);

(B) have no rights to regular compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law;

(C) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

(D) are able to work, available to work, and actively seeking work.

(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.

Section 2107 of the CARES Act created a new temporary federal program called Pandemic Emergency Unemployment Compensation (PEUC) that initially provided up to 13 additional weeks of unemployment benefits to individuals who have exhausted their regular unemployment compensation entitlement and also provided funding to states to administer the program. On December 27, 2020, the Continued Assistance for Unemployed Workers Act (Continued

Assistance Act) was enacted and it extended the PEUC program beyond its original expiration date. See Division N, Title II, Subtitle A of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260). On March 11, 2021, the American Rescue Plan Act (ARPA) was enacted and extended the PEUC program again. See Pub. L. 117-2.

Under Iowa law a claimant is considered partially unemployed in any week when employed in their regular job the individual works less than their regular full-time week and earns less than the individual's weekly benefit amount plus fifteen dollars. See Iowa Code § 96.19(38)(b)(1). When a claimant is partially employed and filing for unemployment benefits a claimant cannot earn wages, bonus pay, holiday pay, and or vacation pay that is more than their weekly benefit amount plus \$15.00. See Iowa Admin. Code r. 871-24.18.

For the week ending December 12, 2020, claimant earned \$215.57 in wages. As a result, claimant was only entitled to a partial benefit payment of \$132.00, according to the following calculation:

$$\begin{aligned} \$215.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} &= \$146.00 \text{ (wage deduction)} \\ \$278.00 \text{ (WBA)} - \$146.00 \text{ (wage deduction)} &= \$132.00 \text{ (partial weekly benefit amount)} \end{aligned}$$

Claimant received the full weekly benefit amount of \$278.00 for the week. Since claimant was only entitled to receive \$132.00 in PEUC benefits she has been overpaid \$146.00 for the week ending December 12, 2020.

For the week ending December 19, 2020, claimant earned \$144.58 in wages. As a result, claimant was only entitled to a partial benefit payment of \$203.00, according to the following calculation:

$$\begin{aligned} \$144.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} &= \$75.00 \text{ (wage deduction)} \\ \$278.00 \text{ (WBA)} - \$75.00 \text{ (wage deduction)} &= \$203.00 \text{ (partial weekly benefit amount)} \end{aligned}$$

Claimant received the full weekly benefit amount of \$278.00 for the week. Since claimant was only entitled to receive \$203.00 in PEUC benefits she has been overpaid \$75.00 for the week ending December 19, 2020.

For the week ending December 26, 2020, claimant earned \$135.38 in wages. As a result, claimant was only entitled to a partial benefit payment of \$212.00, according to the following calculation:

$$\begin{aligned} \$135.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} &= \$66.00 \text{ (wage deduction)} \\ \$278.00 \text{ (WBA)} - \$66.00 \text{ (wage deduction)} &= \$212.00 \text{ (partial weekly benefit amount)} \end{aligned}$$

Claimant received the full weekly benefit amount of \$278.00 for the week. Since claimant was only entitled to receive \$212.00 in PEUC benefits she has been overpaid \$66.00 for the week ending December 26, 2020.

For the week ending January 2, 2021, claimant did not earn wages because claimant requested the week off. Under Iowa Admin. Code r. 871-24.23(16) claimant has limited her hours and she is not available for work. Claimant is not eligible of benefits this week under Iowa law. As a result, claimant was overpaid \$278.00 in PEUC benefits.

For the week ending January 9, 2021 claimant earned \$266.06 in wages. As a result, claimant was only entitled to a partial benefit payment of \$81.00, according to the following calculation:

$$\begin{aligned} \$266.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} &= \$197.00 \text{ (wage deduction)} \\ \$278.00 \text{ (WBA)} - \$197.00 \text{ (wage deduction)} &= \$81.00 \text{ (partial weekly benefit amount)} \end{aligned}$$

Claimant received the full weekly benefit amount of \$278.00 for the week. Since claimant was only entitled to receive \$81.00 in PEUC benefits she has been overpaid \$197.00 for the week ending January 9, 2021.

For the week ending January 16, 2021 claimant earned \$178.45 in wages. As a result, claimant was only entitled to a partial benefit payment of \$169.00, according to the following calculation:

$$\begin{aligned} \$178.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} &= \$109.00 \text{ (wage deduction)} \\ \$278.00 \text{ (WBA)} - \$109.00 \text{ (wage deduction)} &= \$169.00 \text{ (partial weekly benefit amount)} \end{aligned}$$

Claimant received the full weekly benefit amount of \$278.00 for the week. Since claimant was only entitled to receive \$169.00 in PEUC benefits she has been overpaid \$109.00 for the week ending January 16, 2021.

For the week ending January 23, 2021 claimant earned \$189.20 in wages. As a result, claimant was only entitled to a partial benefit payment of \$158.00, according to the following calculation:

$$\begin{aligned} \$189.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} &= \$120.00 \text{ (wage deduction)} \\ \$278.00 \text{ (WBA)} - \$120.00 \text{ (wage deduction)} &= \$158.00 \text{ (partial weekly benefit amount)} \end{aligned}$$

Claimant received the full weekly benefit amount of \$278.00 for the week. Since claimant was only entitled to receive \$158.00 in PEUC benefits she has been overpaid \$120.00 for the week ending January 23, 2021.

For the week ending January 30, 2021 claimant earned \$209.72 in wages. As a result, claimant was only entitled to a partial benefit payment of \$138.00, according to the following calculation:

$$\$209.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} = \$140.00 \text{ (wage deduction)}$$

$$\$278.00 \text{ (WBA)} - \$140.00 \text{ (wage deduction)} = \$138.00 \text{ (partial weekly benefit amount)}$$

Claimant received the full weekly benefit amount of \$278.00 for the week. Since claimant was only entitled to receive \$138.00 in PEUC benefits she has been overpaid \$140.00 for the week ending January 30, 2021.

For the week ending February 6, 2021 claimant earned \$291.97 in wages. As a result, claimant was only entitled to a partial benefit payment of \$56.00, according to the following calculation:

$$\$291.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} = \$222.00 \text{ (wage deduction)}$$

$$\$278.00 \text{ (WBA)} - \$222.00 \text{ (wage deduction)} = \$56.00 \text{ (partial weekly benefit amount)}$$

Claimant received the full weekly benefit amount of \$278.00 for the week. Since claimant was only entitled to receive \$56.00 in PEUC benefits she has been overpaid \$222.00 for the week ending February 6, 2021.

For the week ending February 13, 2021 claimant earned \$354.26 in wages. Claimant earned more than her weekly benefit amount plus \$15.00. Claimant wages exceeded the wage limit and is not eligible for benefits for the week. As a result claimant was overpaid \$278.00 in PEUC benefits for the week ending February 13, 2021.

For the week ending February 20, 2021 claimant earned \$221.83 in wages. As a result, claimant was only entitled to a partial benefit payment of \$126.00, according to the following calculation:

$$\$221.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} = \$152.00 \text{ (wage deduction)}$$

$$\$278.00 \text{ (WBA)} - \$152.00 \text{ (wage deduction)} = \$126.00 \text{ (partial weekly benefit amount)}$$

Claimant received the full weekly benefit amount of \$278.00 for the week. Since claimant was only entitled to receive \$126.00 in PEUC benefits she has been overpaid \$152.00 for the week ending February 20, 2021.

For the week ending February 27, 2021 claimant earned \$359.36 in wages. Claimant earned more than her weekly benefit amount plus \$15.00. Claimant wages exceeded the wage limit and is not eligible for benefits for the week. As a result claimant was overpaid \$278.00 in PEUC benefits for the week ending February 27, 2021.

For the week ending March 6, 2021 claimant earned \$274.36 in wages. As a result, claimant was only entitled to a partial benefit payment of \$73.00, according to the following calculation:

$$\begin{aligned} \$274.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} &= \$205.00 \text{ (wage deduction)} \\ \$278.00 \text{ (WBA)} - \$205.00 \text{ (wage deduction)} &= \$73.00 \text{ (partial weekly benefit amount)} \end{aligned}$$

Claimant received the full weekly benefit amount of \$278.00 for the week. Since claimant was only entitled to receive \$73.00 in PEUC benefits she has been overpaid \$205.00 for the week ending March 6, 2021.

For the week ending March 13, 2021 claimant earned \$274.07 in wages. As a result, claimant was only entitled to a partial benefit payment of \$73.00, according to the following calculation:

$$\begin{aligned} \$274.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} &= \$205.00 \text{ (wage deduction)} \\ \$278.00 \text{ (WBA)} - \$205.00 \text{ (wage deduction)} &= \$73.00 \text{ (partial weekly benefit amount)} \end{aligned}$$

Claimant received the full weekly benefit amount of \$278.00 for the week. Since claimant was only entitled to receive \$73.00 in PEUC benefits she has been overpaid \$205.00 for the week ending March 13, 2021.

For the week ending March 20, 2021 claimant earned \$154.73 in wages. As a result, claimant was only entitled to a partial benefit payment of \$193.00, according to the following calculation:

$$\begin{aligned} \$154.00 \text{ (wages)} - \$69.00 \text{ (25\% of WBA)} &= \$85.00 \text{ (wage deduction)} \\ \$278.00 \text{ (WBA)} - \$85.00 \text{ (wage deduction)} &= \$193.00 \text{ (partial weekly benefit amount)} \end{aligned}$$

Claimant received the full weekly benefit amount of \$278.00 for the week. Since claimant was only entitled to receive \$193.00 in PEUC benefits she has been overpaid \$85.00 for the week ending March 20, 2021.

For the week ending March 27, 2021 claimant earned \$135.38 in wages. As a result, claimant was only entitled to a partial benefit payment of \$212.00, according to the following calculation:

$\$135.00$ (wages) - $\$69.00$ (25% of WBA) = $\$66.00$ (wage deduction)

$\$278.00$ (WBA) - $\$66.00$ (wage deduction) = $\$212.00$ (partial weekly benefit amount)

Claimant received the full weekly benefit amount of $\$278.00$ for the week. Since claimant was only entitled to receive $\$212.00$ in PEUC benefits she has been overpaid $\$66.00$ for the week ending March 27, 2021.

In total claimant was overpaid a gross total of $\$2,622.00$ in PEUC benefits for the period of December 6, 2020, through March 27, 2021.

The next issue is whether the imposition of a 15% penalty due to misrepresentation was warranted.

PL 116-136 Sec 2107(e) provides in pertinent part:

PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION.

(e) 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 pandemic emergency unemployment compensation under this section to which such individual was not entitled, such individual –

(A) shall be ineligible for further pandemic emergency unemployment compensation under this section 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).

The decision in this case rests, at least in part, on the credibility of the witnesses. 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 claims she stopped filing for benefits after April 25, 2020, however this is not credible. Prior to this time she acknowledges she filed for benefits and reported her wages each week. Claimant testified she did not give her log in information to file for benefits to anyone else. All of the benefits went into the same bank account for the claimant during the entire time weekly claims were filed in her name. Claimant received the benefits that were filed on her behalf and spent the money.

Claimant continued to file for benefits and did not report her wages for sixteen different weeks that she filed for PEUC benefits. The administrative law judge finds that the claimant knowingly omitted material information by failing to report the earnings from The City of Ames when she filed her weekly-continued claims for unemployment insurance benefits. This was an intentional concealment of a material fact which led to the payment of benefits.

The administrative law judge finds the claimant knowingly omitted material information and engaged in fraud by reporting that she was not working each week and failing to report her gross earnings from The City of Ames when she filed her weekly-continued claims for PEUC benefits. This was an intentional concealment of a material fact that led to the payment of benefits. Therefore, the penalty of 15% was properly imposed pursuant to PL 116-136 Sec 2107(e)) and UIPL No. 20-21 issued on May 5, 2021.

DECISION:

The October 27, 2022 (reference 05) unemployment insurance decision is MODIFIED in favor of appellant. The claimant is overpaid PEUC benefits in the amount of \$2,622.00 for the weeks between December 6, 2020 through March 27, 2021 and is required to repay the agency this overpayment balance. The claimant engaged in misrepresentation and IWD properly imposed the administrative penalty of 15%. The penalty due to misrepresentation must be repaid as well.

Claimant should note the overpayment amount may increase after the issues on remand have been determined.

REMAND:

The issue of whether claimant is entitled to PEUC benefits is remanded to the benefits bureau for an initial investigation and determination. The benefits bureau should look at the issues of whether claimant was employed for the same hours and wages, and whether claimant was totally, partially, or temporarily unemployed with employers Walmart Inc. and The City of Ames during this claim year.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

December 7, 2022

Decision Dated and Mailed

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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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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 se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.