

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

JUSTIN J THARP

Claimant

BELL AUTOMOTIVE HOLDING LLC

Employer

APPEAL 22A-UI-17944-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/20

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:

Justin J. Tharp, the claimant/appellant, filed an appeal from the October 4, 2022 (reference 03) unemployment insurance (UI) decision. The decision concluded that Mr. Tharp was overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits in the gross amount of \$2,400.00 and overpaid Lost Wage Assistance Payments (LWAP) benefits in the gross amount of \$1,200.00 because he did not correctly report wages earned with the employer. The parties were properly notified of the hearing. A telephone hearing was held on November 2, 2022. Appeals 22A-UI-17943-DZ-T, and 22A-UI-17944-DZ-T were heard together and formed one hearing record. Mr. Tharp participated personally. The employer did not participate in the hearing. The administrative law judge took official notice of the administrative record. Department's Exhibits 1 and 2 were admitted as evidence.

ISSUES:

Did Mr. Tharp correctly report wages earned?
Has Mr. Tharp been overpaid FPUC and/or LWAP benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Tharp began working for the employer in July 2020 as a full-time mechanic. The employer paid him \$14.00 - \$15.00 per hour. Mr. Tharp filed his UI claim because the employer reduced his hours due to the COVID-19 pandemic.

In relevant part, Mr. Tharp filed weekly UI claims for 13 weeks from June 28, 2020 through September 5, 2020. Each week Mr. Tharp would go to his boss' office, log into his own UI account, and watch as his boss completed Mr. Tharp's weekly UI claim. Mr. Tharp did this because he did not understand the UI process, he was not comfortable using computers, and he trusted his boss. Mr. Tharp did not review his claim before it was submitted. Mr. Tharp suspects, but does not know, that the employer reported his net weekly wages and not his gross weekly wages.

IWD sent Mr. Tharp REGULAR (state) UI benefits because IWD had made a policy decision, given the global COVID-19 pandemic, to send claimants who filed an initial UI claim and weekly UI claims REGULAR (state) UI benefits even if IWD had not yet decided if claimants were eligible for benefits. IWD also sent Mr. Tharp FPUC benefits and LWAP benefits based on IWD's decision to send her REGULAR (state) UI benefits. In relevant part, IWD sent Mr. Tharp FPUC benefits in the gross amount of \$2,400.00 (\$600.00 per week) for the 4 weeks from June 28, 2020 through July 25, 2020. IWD also sent Mr. Tharp LWAP benefits in the gross amount of \$1,200.00 (\$300.00 per week) for the 2 weeks from July 26, 2020 through August 8, 2020, and for the 2 weeks from August 23, 2020 through September 5, 2020.

IWD conducted an audit of Mr. Tharp's wages in January 2021. On January 13, 2021, IWD asked the employer to report Mr. Tharp's weekly gross wages for the 13 weeks from June 28, 2020 through September 26, 2020. On February 3, 2021, the employer reported Mr. Tharp's wages to IWD. Over two years after he filed his initial claim, and had already received REGULAR (state) UI benefits, FPUC benefits, and LWAP benefits, IWD issued a reference 02 decision finding Mr. Tharp was overpaid REGULAR (state) UI benefits from June 28, 2020 through September 26, 2020 because he did not report or incorrectly reported wages earned with the employer. Mr. Tharp appealed the decision. The administrative law judge's decision in Appeal 22A-UI-17943-DZ-T modified the reference 02 decision in Mr. Tharp's favor and concluded that Mr. Tharp was entitled to \$0.00 in REGULAR (state) UI benefits for the 6 weeks from June 28, 2020 through August 8, 2020, and for the 2 weeks from August 23, 2020 through September 5, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes: Mr. Tharp has been overpaid FPUC benefits and LWAP benefits.

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.

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...

The reference 02 decision that found Mr. Tharp was overpaid REGULAR (state) UI benefits means Mr. Tharp was not eligible for REGULAR (state) UI benefits for the weeks she was overpaid. Since Mr. Tharp is not eligible for REGULAR UI benefits for the 6 weeks from June 28, 2020 through August 8, 2020, and for the 2 weeks from August 23, 2020 through September 5, 2020, he is also not eligible for FPUC benefits or LWAP benefits for those weeks. Mr. Tharp has been overpaid FPUC benefits in the gross amount of \$2,400.00 for the 4 weeks from June 28, 2020 through July 25, 2020. Mr. Tharp has also been overpaid LWAP benefits in the gross amount of \$1,200.00 for the 2 weeks from July 26, 2020 through August 8, 2020, and for the 2 weeks from August 23, 2020 through September 5, 2020. The benefits should be repaid.

DECISION:

The October 4, 2022, (reference 03) UI decision is AFFIRMED. Mr. Tharp has been overpaid FPUC benefits in the gross amount of \$2,400.00, and he has been overpaid LWAP benefits in the gross amount of \$1,200.00. These benefits must be repaid.



Daniel Zeno
Administrative Law Judge

November 9, 2022
Decision Dated and Mailed

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NOTE TO MR. THARP:

- This decision determines you have been overpaid FPUC benefits and LWAP benefits. If you disagree with this decision, you may file an appeal by following the instructions on the last page of this decision.
- **You may also request a waiver of these overpayments by 1) applying for a waiver online, 2) applying for a waiver in writing by mail, or 3) filing an appeal.**
- The **online waiver request form** is available on the Iowa Workforce Development website at: <https://www.iowaworkforcedevelopment.gov/federal-unemployment-insurance-overpayment-recovery>
- The **written waiver request** must include the following information:
 - Your name & address.
 - Decision number/date of decision.
 - Dollar amount of overpayment requested for waiver.
 - Relevant facts that you feel would justify a waiver.
- The written waiver request should be sent to:

Iowa Workforce Development
Overpayment waiver request
1000 East Grand Avenue
Des Moines, IA 50319
- If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.

APPEAL RIGHTS. If you disagree with this 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 adquiera 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.