

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BESIM GJOKA
Claimant

APPEAL 23A-UI-08187-SN

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 09/15/19
Claimant: Appellant (2)**

PL 116-136 Section 2104 – Pandemic Unemployment Compensation (FPUC)
PL 116-136, Section 2107 – Pandemic Emergency Unemployment Compensation (PEUC)
Iowa Code 96.3(7) – Overpayment of Benefits / Lost Wage Assistance

STATEMENT OF THE CASE:

The claimant/appellant, Besim Gjoka, filed an appeal from the August 18, 2023 (reference 06) unemployment insurance decision that found claimant's request for waiver of FPUC, PEUC, LWA overpayment was denied. The claimant was properly notified of the hearing.

Prior to the hearing, the claimant requested this his son be present at the hearing to serve as his interpreter. The administrative law judge's clerk informed the claimant that his son could participate, but he would be provided an Albanian interpreter on the date of the hearing.

An in-person hearing was held at the IowaWORKS office located at 300 West Broadway, Suite 13, in Council Bluffs, Iowa on September 15, 2023 at 10:00 a.m. The claimant participated personally. The claimant stated that he did not think he needed an interpreter on the date of the hearing. The administrative law judge went forward without one as it is the claimant's choice to have one or not. The claimant's son was not present. The administrative law judge took official notice of the claimant's administrative records.

ISSUES:

Should the claimant's PEUC overpayment be waived?

Should the claimant's FPUC overpayment be waived?

Should the claimant's LWA overpayment be waived?

FINDINGS OF FACT:

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

The claimant filed an original claim for regular unemployment insurance benefits funded by the State of Iowa effective September 15, 2019. The claimant exhausted his regular benefit claim with the week ending July 4, 2020.

The claimant was paid PEUC benefits for the weeks between July 11, 2020 and September 5, 2020 for a total amount of \$4,810.00. Pandemic Emergency Unemployment Compensation is a federal benefit meant to extend benefits during the pandemic to those who had exhausted their regular benefits. At the time he received these benefits, the claimant did not know that if he was eligible for regular benefits in another state he would be disqualified for these benefits in Iowa. Congress made this a condition to ensure these benefits extended benefits only to those who had exhausted all regular unemployment benefits.

The claimant was paid FPUC benefits for the weeks between July 11, 2020 and July 25, 2020 for a total amount of \$1,800.00 as a supplement to his eligibility for PEUC benefits. Congress intended this benefit to be a supplement of underlying benefits, provided the claimant was eligible for that underlying benefit and had not exhausted his maximum FPUC allowance.

The claimant was paid LWA benefits for the week ending August 1, 2020 through September 5, 2020 for a total amount of \$1,800.00 as a supplement to his eligibility for PEUC benefits for these weeks.

In a decision dated September 21, 2020 (reference 02), it was determined that the claimant was not eligible for PEUC benefits. This ineligibility decision resulted in Iowa Workforce Development Department finding the claimant in eligible for his receipt of supplementary LWA and FPUC benefits as well.

PEUC, FPUC, and LWA benefits were initially paid to the claimant because no initial determination finding the claimant was not eligible had been made at that time. The claimant was advised throughout the appeals process to continue to file weekly claims, even if denied benefits.

The claimant used the benefits received to pay for necessary living expenses, including, food, shelter and clothing. The claimant's currently does not have any income because he was laid off from his job on August 4, 2023. He had been receiving income from that job since September 2022. This income was used to repay his son who helped him for the 18 months that he was unemployed and without benefits from September 5, 2020 to September 2022. To make matters worse, the claimant could not pay his mortgage for much of that period. He was able to defer paying mortgage payments due to another program given by banks during the Covid19 pandemic. He does not have any dependents. The claimant's monthly expenses typically exceed their monthly income. The claimant has \$6,800.00 in savings, but he needs this money to help him get back on his feet. The claimant offered he had just applied for Supplemental Nutrition Assistance Program ("SNAP") recently due to his financial circumstances. He has not yet received a determination, but he believes he meets the assistance guidelines for SNAP.

REASONING AND CONCLUSIONS OF LAW:

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

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. The CARES Act provides that a State agency may waive repayment of an overpayment in certain circumstances.

PL 116-136, Sec. 2107(e) provides:

(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 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.
- (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 amount 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.

PL 116-136, Sec. 2104(f) provides:

(f) Fraud and Overpayments. –

- (3) 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 –
- (C) 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
 - (D) Shall be subject to prosecution under section 1001 of title 18, United States Code.
- (4) 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 amount of such Federal Pandemic Unemployment Compensation to the State agency, except that the State agency may waive such repayment if it determines that –
- (C) the payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual and;
 - (D) such repayment would be contrary to equity and good conscience.

Iowa Code § 96.3(7)a-b, as amended in 2008, provides:

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.

In determining whether the payment of FPUC benefits was without fault on the part of the claimant, several factors must be considered. Those factors include whether a material statement or representation was made by the claimant in connection with the application for benefits and whether the claimant knew or should have known that the statement was

inaccurate; whether the claimant failed or caused another to fail to disclose a material fact in connection with the application for benefits that resulted in the overpayment and whether the claimant knew or should have known that the fact was material; whether the claimant knew or could have been expected to know that they were not entitled to the compensation payment; and whether the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the claimant or of which the claimant had knowledge and which was erroneous or inaccurate or otherwise wrong. *Cf.* Iowa Admin. Code r. 871-24.50(7)(factors for waiver of temporary extended unemployment compensation).

In deciding whether repayment would be contrary to equity and good conscience, several factors must be considered. Those factors include whether repayment would cause financial hardship to the claimant; or, that the claimant (regardless of financial circumstances) can establish that they have relinquished a valuable right or changed positions for the worse; or, recovery would be unconscionable under the circumstances. See UIPL No. 20-21(4)d. Other factors include whether the overpayment was the result of a decision on appeal; whether the state agency had given notice to the claimant that they may be required to repay the overpayment in the event of a reversal of the eligibility determination on appeal; and whether recovery of the overpayment will cause financial hardship to the claimant. *Cf.* Iowa Admin. Code r. 871-24.50(7)(factors for waiver of temporary extended unemployment compensation).

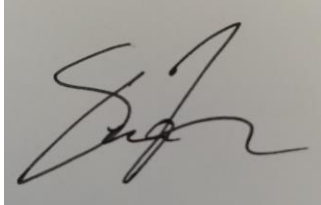
The claimant was initially paid PEUC, LWA, and FPUC benefits due to his initial eligibility for regular unemployment insurance PEUC benefits; however, the claimant was later determined to be ineligible for those benefits. Since LWA and FPUC were paid supplemental to the claimant's receipt of PEUC benefits, he was found similarly ineligible for those benefits.

No material misstatements or misrepresentations were made by the claimant when filing for benefits. The claimant did not know or should not have known that they would be denied benefits at a later date. The overpayment was not a direct result of any knowing actions or omissions of the claimant. As such, the payment of FPUC, LWA, PEUC benefits was without fault on the part of the claimant. Further, based upon the claimant's financial circumstances, recovery of the overpayment would cause a financial hardship to the claimant.

As such, the claimant's total overpayment amount of \$8,410.00 comprising benefits received under FPUC, PEUC, and LWA benefits shall be waived and claimant has no obligation to pay back those FPUC benefits received.

DECISION:

The August 18, 2023 (reference 06) unemployment insurance decision is REVERSED. The claimant's combined overpayment of FPUC, LWA, PEUC benefits in the amount of \$8,410.00 is waived in its entirety. The claimant has no obligation to pay back the FPUC, LWA, PEUC benefits received.

A handwritten signature in black ink on a light gray background. The signature is stylized and appears to read 'Sean M. Nelson'.

Sean M. Nelson
Administrative Law Judge

September 18, 2023
Decision Dated and Mailed

SMN/jkb

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.