

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LINCOLN A SCHAFTNER ACKERSON
Claimant

APPEAL NO. 22A-UI-06825-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 04/19/20
Claimant: Appellant (1R)

Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

On March 14, 2022, Lincoln Schaftner Ackerson (claimant/appellant) appealed the Iowa Workforce Development ("IWD") decision dated March 3, 2022 (reference 06) that concluded the claimant was overpaid Lost Wage Assistance Payments in the amount of \$1,500.00 for five weeks between August 2 and September 5, 2020 as a result of a prior decision denying benefits.

A telephone hearing was held on May 2, 2022. Claimant participated personally and was represented by Attorney Kimberly Auge. It does not appear a notice of hearing for this matter was properly issued. Claimant waived the ten-day notice period.

Appeal Nos. 22A-UI-06821-AD-T, 22A-UI-06822-AD-T, 22A-UI-06824-AD-T, AND 22A-UI-06825-AD-T were heard together and formed a single record. No exhibits were offered or admitted. Official notice was taken of the administrative record.

ISSUE:

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 LWAP in the amount of \$1,500.00 during the period in question. Claimant was subsequently determined to be disqualified from benefits during that period in a decision dated March 2, 2021. That decision remains in force. See 22A-UI-06821-AD-T.

A decision was issued on March 15, 2021 finding claimant eligible for Pandemic Unemployment Assistance (PUA) in the amount \$481.00 per week effective April 19, 2020. It does not appear PUA or related Federal Pandemic Unemployment Compensation or Lost Wage Assistance Payments have yet issued.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated March 3, 2022 (reference 06) that concluded the claimant was overpaid Lost Wage Assistance Payments in the amount of \$1,500.00 for five weeks between August 2 and September 5, 2020 as a result of a prior decision denying benefits 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.

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.

The administrative record shows claimant received LWAP in the amount of \$1,500.00 during the period in question. Claimant was subsequently determined to be disqualified from benefits during that period in a decision dated March 2, 2021. That decision remains in force. See 22A-UI-06821-AD-T.

Because the claimant was disqualified from receiving UI during the relevant period he is also ineligible for LWAP during that period. Claimant has therefore been overpaid LWAP in the amount of \$1,500.00.

DECISION:

The decision dated March 3, 2022 (reference 06) that concluded the claimant was overpaid Lost Wage Assistance Payments in the amount of \$1,500.00 for five weeks between August 2 and September 5, 2020 as a result of a prior decision denying benefits is AFFIRMED.

REMAND:

This matter is REMANDED for issuance of any PUA, FPUC, and LWAP payments due claimant. Those payments may be withheld to the extent allowed by law to recover the existing overpayments.



Andrew B. Duffelmeyer
Administrative Law Judge

May 4, 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.