

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

YEVGENIY V PUSTOVIT
Claimant

**IOWA WORKFORCE
DEVELOPMENT**

APPEAL 23A-UI-09389-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (2)

Public Law 116-136, sec. 2104 – Federal Pandemic Unemployment Compensation
Public Law 116-136, sec. 2107 – Federal Pandemic Emergency Unemployment Compensation
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On October 4, 2023, claimant Yevgeniy V. Pustovit filed an appeal from the September 13, 2023 (reference 06) unemployment insurance decision that denied claimant's application to waive his overpayments of Federal Pandemic Unemployment Compensation ("FPUC") benefits and Federal Pandemic Emergency Unemployment Compensation ("PEUC") benefits. The parties were properly notified of the hearing. A telephonic hearing was held at 10:00 a.m. on Thursday, October 19, 2023. Claimant Yevgeniy V. Pustovit personally participated. Claimant's wife, Rachel Pustovit, acted as claimant's representative and also testified on his behalf. Iowa Workforce Development did not participate. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the claimant file a timely appeal? Is there good cause to treat claimant's appeal as timely?
May the claimant's application to waive his PEUC overpayment balance be waived?
May the claimant's application to waive his FPUC overpayment balance be waived?

FINDINGS OF FACT:

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

Claimant filed an original claim for regular unemployment insurance benefits effective March 29, 2020. Claimant was paid PEUC benefits in the gross amount of \$6,500.00 for the weeks between October 4, 2020 and January 2, 2021 based upon their eligibility for regular unemployment insurance ("UI") benefits.

In a decision dated January 13, 2021 (reference 03), it was determined that the claimant was not eligible for PEUC benefits. Claimant was then determined to be overpaid PEUC benefits in the amount of \$6,500.00 for the weeks between October 4, 2020 and January 2, 2021. Claimant was also determined to be overpaid FPUC benefits in the amount of \$300.00 for the

one week ending January 2, 2021. Claimant filed an application for waiver of the overpayment of benefits.

PEUC and FPUC benefits were initially paid to claimant because no initial determination had yet been made finding the claimant ineligible for benefits. When claimant received the reference 03 decision advising him that he was eligible for UI benefits in Nebraska, he contacted Nebraska and was informed that decision was incorrect. Claimant then contacted IWD again, who agreed the reference 03 decision was incorrect and who advised claimant to keep his claim in Iowa for the time being.

Claimant used the benefits received to pay for necessary living expenses, including, food, shelter and clothing. Claimant lives with his spouse and one dependent. His monthly income did not cover his monthly expenses during he pandemic, and he incurred significant debt which he and his spouse have worked diligently to pay off. Claimant and his spouse have no savings to apply to the overpayment.

The unemployment insurance decision denying claimant's waiver application was sent to his address of record on September 13, 2023. Claimant received it just prior to the appeal deadline. However, claimant was then assaulted and seriously injured. He was out of work and incapacitated for a period of time after the assault. Claimant had surgery on October 2, 2023, and he filed his appeal two days after surgery.

REASONING AND CONCLUSIONS OF LAW:

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

The first issue to be considered in this appeal is whether the appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.”

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Here, the claimant had a personal medical emergency that prevented him from filing his appeal prior to the appeal deadline. He filed his appeal within a reasonable amount of time after having surgery following the assault. For this reason, claimant's appeal is deemed timely filed.

FEDERAL PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION (PEUC)

PL 116-136 Section 2107 of the CARES Act created PEUC, a new temporary federal benefit program that provided up to 13 additional weeks of benefits to individuals who (1) had exhausted all rights to regular unemployment compensation under state or federal law with respect to a benefit year, (2) had no right to compensation with respect to a week under state or federal law, (3) were not receiving compensation under Canadian law and (4) were able to, available for and actively seeking work. This initial program ran from March 29, 2020 through December 26, 2020.

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 206 reauthorized the PEUC program through March 14, 2021 (plus an additional phase-out period) and increased the number of weeks from 13 to 24. On March 11, 2021, the President signed the American Rescue Plan Act of 2021 (ARPA). Section 9016 of ARPA extends the PEUC program through September 6, 2021 and increased the number of weeks from 24 to 53.

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 PEUC 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)(2) provides:

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.
- (2) Repayment. – In the case of individuals who have received amounts of pandemic emergency unemployment compensation 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.

FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION (FPUC)

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. 2104(f)2 provides:

EMERGENCY INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

(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.

WAIVER CRITERIA

In determining whether the payment of PEUC and 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).

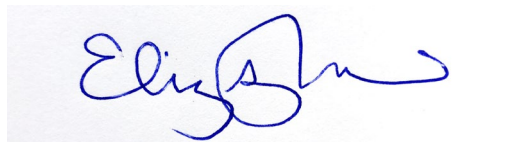
ANALYSIS

Claimant was initially found eligible for PEUC (and correspondingly, FPUC) benefits; however, claimant was later determined to be ineligible for those benefits. Claimant was paid all of the PEUC benefits at issue before IWD determined whether claimant was eligible for those benefits. Subsequently, IWD sent claimant a decision informing him that he was not eligible for the PEUC benefits received. Claimant made no material misstatements or misrepresentations when filing for benefits. Claimant did not know or should not have known that they would be denied PEUC 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 PEUC benefits was without fault on the part of the claimant. Further, based upon claimant's financial circumstances, repayment of the overpayment would cause claimant a hardship.

As such, claimant's repayment of the PEUC overpayment in the amount of \$6,500.00 and the FPUC overpayment in the amount of \$300.00 shall be waived. Claimant has no obligation to repay those benefits received.

DECISION:

The September 13, 2023 (reference 06) unemployment insurance decision is reversed. Claimant's PEUC overpayment in the amount of \$6,500.00 is waived. Claimant's FPUC overpayment in the amount of \$300.00 is waived. The claimant is not obligated to pay back the PEUC or FPUC benefits received.



Elizabeth A. Johnson
Administrative Law Judge

October 25, 2023
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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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.