

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

LESHAWN M SMITH
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 22A-UI-17097-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Appellant (1)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation
Iowa Code § 96.6(3) – Appeals
Iowa Admin. Code r. 871-24.28(6) – Prior Adjudication

STATEMENT OF THE CASE:

LeShawn M. Smith, the claimant/appellant filed an appeal from the Iowa Workforce Development (IWD) August 18, 2022 (reference 03) unemployment insurance (UI) decision that concluded she was overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits in the gross amount of \$6,000.00, and overpaid Lost Wage Assistance Payments (LWAP) benefits in the gross amount of \$1,200.00. The parties were properly notified about the hearing. A telephone hearing was held on October 14, 2022. Ms. Smith participated personally. The department did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUE:

Has Ms. Smith been FPUC and/or LWAP benefits?
Was the issue of an FPUC and/or LWAP overpayment adjudicated in a different claim year?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Smith filed an initial claim for REGULAR (state) UI benefits effective May 17, 2020. Ms. Smith filed weekly UI claims for 14 weeks between May 17, 2020 and August 22, 2020, and IWD paid her REGULAR (state) UI benefits for those 14 weeks. IWD also paid Ms. Smith Federal Pandemic Unemployment Compensation (FPUC) benefits in the gross amount of \$6,000.00 for 10 weeks between May 17, 2020 and July 25, 2020, and Lost Wage Assistance Payments (LWAP) benefits in the gross amount of \$1,200.00 for 4 weeks between July 26, 2020 and August 22, 2020.

FPUC was a program under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 that provided additional payment to those individuals that are receiving state or federal unemployment insurance payments. It is funded by the federal government, not by state unemployment taxes paid by employers. The Continued Assistance for Unemployed Workers

Act of 2020 (enacted December 27, 2020) and American Rescue Act of 2021 (enacted March 11, 2021) extended FPUC benefits for weeks of unemployment to September 6, 2021. The FPUC amount was \$600.00 per week from April 5, 2020 through July 31, 2020. The FPUC amount was \$300.00 per week from December 27, 2020 through September 5, 2021. Governor Reynolds ended Iowa's participation in federal pandemic-related unemployment benefit programs, including the FPUC program, effective June 12, 2021.

The Lost Wage Assistance Program was created by presidential Executive Order 8, signed on August 8, 2020. To receive LWAP benefits in any given week, a claimant must be eligible to receive at least \$100.00 in unemployment benefits per week, and the individual must self-certify that he or she is unemployed or partially unemployed as a result of the COVID-19 pandemic.

Almost five months after Ms. Smith had filed her initial UI claim effective May 17, 2020, and after IWD had already sent Ms. Smith REGULAR (state) UI benefits, FPUC benefits and LWAP benefits, IWD issued two UI decisions. On October 15, 2020, IWD issued a reference 01 UI decision finding Ms. Smith not eligible for REGULAR (state) UI benefits as of May 17, 2020 because IWD records indicated that Ms. Smith had not been paid at least eight times the prior claim year's weekly benefit amount (WBA) in insured wages during or after the prior claim year. On October 16, 2020, IWD issued a reference 02 UI decision finding Ms. Smith was overpaid REGULAR (state) UI benefits in the gross amount of \$7,512.50 for 14 weeks between May 17, 2020 and August 22, 2020 because of the October 15, 2020 (reference 01) UI decision that had found her not eligible for REGULAR (state) UI benefits for those weeks. Ms. Smith appealed both decisions. The administrative law judge's January 26, 2021 decision in Appeal 20A-UI-13361-AW-T affirmed the reference 01 UI decision. That meant Ms. Smith was not eligible for REGULAR (state) UI benefits as of May 17, 2020. The administrative law judge's January 26, 2021 decision in Appeal 20A-UI-13362-AW-T affirmed the reference 02 UI decision. That meant Ms. Smith was overpaid REGULAR (state) UI benefits in the gross amount of \$7,512.50 for 14 weeks between May 17, 2020 and August 22, 2020.

The administrative law judge further finds: The issue of an overpayment of FPUC and/or LWAP benefits has not been previously adjudicated (decided). The prior overpayment UI decision IWD issued was about a REGULAR (state) UI overpayment.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code §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.

PL 116-136, 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...

Since Ms. Smith is not eligible for REGULAR (state) UI benefits for 14 weeks between May 17, 2020 and August 22, 2020, she is also not eligible for FPUC benefits and LWAP benefits for those weeks. Ms. Smith has been overpaid FPUC benefits in the gross amount of \$6,000.00 for 10 weeks between May 17, 2020 and July 25, 2020. Ms. Smith has been overpaid LWAP benefits in the gross amount of \$1,200.00 for 4 weeks between July 26, 2020 and August 22, 2020. These benefits should be repaid.

The administrative law judge further concludes as follows:

Iowa Code section 96.6(3) provides:

Filing – determination – appeal.

3. Appeals.

a. Unless the appeal is withdrawn, an administrative law judge, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the representative. The hearing shall be conducted pursuant to the provisions of chapter 17A relating to hearings for contested cases. Before the hearing is scheduled, the parties shall be afforded the opportunity to choose either a telephone hearing or an in-person hearing. A request for an in-person hearing shall be approved unless the in-person hearing would be impractical because of the distance between the parties to the hearing.

A telephone or in-person hearing shall not be scheduled before the seventh calendar day after the parties receive notice of the hearing. Reasonable requests for the postponement of a hearing shall be granted. The parties shall be duly notified of the administrative law judge's decision, together with the administrative law judge's reasons for the decision, which is the final decision of the department, unless within fifteen days after the date of notification or mailing of the decision, further appeal is initiated pursuant to this section.

b. Appeals from the initial determination shall be heard by an administrative law judge employed by the department. An administrative law judge's decision may be appealed by any party to the employment appeal board created in section 10A.601. The decision of the appeal board is final agency action and an appeal of the decision shall be made directly to the district court.

The issue of an FPUC and/or LWAP overpayment has not been previously decided.

DECISION:

The August 18, 2022, (reference 03) UI decision is AFFIRMED. Ms. Smith has been overpaid FPUC benefits in the gross amount of \$6,000.00, and she has been overpaid LWAP benefits in the gross amount of \$1,200.00. These benefits should be repaid. The issue of an FPUC and/or LWAP overpayment has not been previously decided.



Daniel Zeno
Administrative Law Judge

October 18, 2022
Decision Dated and Mailed

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NOTE TO MS. SMITH RE: FPUC AND LWAP OVERPAYMENTS:

- You may request a waiver of the \$6,000.00 FPUC overpayment, and the \$1,200.00 LWAP overpayment by 1) applying for a waiver online, 2) applying for a waiver in writing by mail, or 3) by filing an appeal (see the last page of this decision for appeal information).
- The **online wavier 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
- To check on your waiver application call **888-848-7442** or email iwduiatax@iwdiowa.gov
- 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 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.