

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

TAWNI J PETERS
Claimant

APPEAL NO. 22A-UI-15878-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
INVESTIGATIONS & RECOVERY UNIT**

**OC: 03/15/20
Claimant: Appellant (1)**

P.L. 116-136, §2107 – Pandemic Emergency Unemployment Compensation Overpayment
Iowa Code Section 96.16(4) – Misrepresentation & Penalty
Iowa Code Section 96.5(8) – Administrative Penalty

STATEMENT OF THE CASE:

On August 7, 2022, Tawni Peters (claimant) filed a timely appeal from the August 3, 2022, (reference 08) decision that held she was overpaid \$9,204.00 in Pandemic Emergency Unemployment Compensation (PEUC) for 24 weeks between December 27, 2020 and June 12, 2021, based on the Agency investigator's determination the claimant failed to report and/or incorrectly reported wages earned with Central Standard Waukee, L.L.C. The reference 08 decision held that at 15 percent penalty would be added to the PEUC overpayment amount due to the claimant's misrepresentation, and that the overpayment plus penalty must be repaid before any further benefits could be paid. The reference 08 decision further held that the would be a further administrative penalty would be assessed in the 36 calendar months following the last week of misrepresentation. After due notice was issued, a hearing was held on September 8, 2022. Claimant participated. Jennifer Vogt, Investigator, represented Iowa Workforce Development Investigations & Recovery Unit. There were three appeal numbers set for a consolidated hearing: 22A-UI-15878-JT-T, 22A-UI-15882-JT-T, and 22A-UI-15883-JT-T. Department Exhibits A-1 through D were received into evidence. The administrative law judge took official notice of the Iowa Workforce Development record regarding the outstanding overpayment and penalty balance.

ISSUES:

Whether the claimant was overpaid \$9,204.00 in Pandemic Emergency Unemployment Compensation (PEUC) for 24 weeks between December 27, 2020 and June 12, 2021, due to the claimant's failure to report and/or incorrect reporting of wages earned with Central Standard Waukee, L.L.C.

Whether the claimant intentionally misrepresented wages and therefore is subject to a 15-percent penalty, is subject to the requirement that the overpayment plus penalty be repaid prior to payment of additional benefits, and is subject to a further administrative penalty in the 36 calendar months following the last week of misrepresentation.

FINDINGS OF FACT:

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

Tawni Peters established an original claim for benefits that was effective March 15, 2020. Iowa Workforce Development set the weekly benefit amount at \$473.00. The claimant received \$473.00 in weekly Pandemic Emergency Unemployment Compensation (PEUC) for each of the 24 weeks between December 27, 2020 and June 12, 2021. The claimant also received \$300.00 in weekly Federal Pandemic Unemployment Compensation (FPUC) for each of the 24 weeks between December 27, 2020 and June 12, 2021. The claimant's eligibility for the FPUC benefits depended on the claimant's eligibility for PEUC benefits for the same week. Throughout the 24 weeks in question, the claimant was employed by Central Standard Waukee, L.L.C. as a server, bartender and key holder. The claimant's wages included an hourly wage plus tips. For each of the 24 weeks in question, the claimant knowingly and intentionally underreported her earned wages when making her weekly claim to Iowa Workforce Development. See Department Exhibit A-10. The claimant was careful to never report more than \$118.00 in weekly earned wages, one-fourth of her weekly benefit amount, in order to manipulate Iowa Workforce Development into paying the claimant the maximum benefit amounts during each of the 24 weeks in question, even for those weeks in which the claimant had in fact earned several hundred dollars more than she reported to Iowa Workforce Development. See Department Exhibit A-10. The claimant's knowing and intentional underreporting of her earned hourly wages and tips came to the attention of Iowa Workforce Development through an investigation initiated in July 2021. Pursuant to the investigation, Iowa Workforce Development solicited and received work hours, hourly wage and tip information from the employer. The Agency also interviewed the claimant and, at the claimant's request solicited updated information from the employer. Based on the claimant's knowing and intentional underreporting of her earned hourly wages and tips, the claimant obtained \$9,204.00 in PEUC benefits for which she was ineligible, along with \$3,900.00 in FPUC benefits for 13 weeks between January 3, 2021 and June 5, 2021 for which she was not eligible.

REASONING AND CONCLUSIONS OF LAW:

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.

Gross wages must be reported to Iowa Workforce Development as part of the weekly claim for the week in which the wages were earned. See Iowa Administrative Code rules 871-24.2(1)(g)(3)(2) and 871-24.2(2)(e)(2).

The reporting requirement is addressed in the 2019 Unemployment Insurance Claimant Handbook at page 8:

What to Report on the Weekly Claim?

You must report all gross earnings and gross wages on the weekly claim. Wages are reportable when earned, not when paid. Gross earnings or gross wages are your earnings before taxes or other payroll deductions are made. For additional information, please refer to the page on reportable income.

2019 Unemployment Insurance Claimant Handbook Updated 1-1-20.pdf.

The wages to be reported include tips. See Iowa Administrative Code rule 871-24.13(2)(g).

PL 116-136, Section 2107(e) provides, in relevant part, as follows:

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 under this section 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.

(3) Recovery by State agency

(A) In general

The State agency shall recover the amount to be repaid, or any part thereof, by deductions from any pandemic emergency unemployment compensation payable to such individual under this section or from any unemployment compensation payable to such individual under any State or Federal unemployment compensation law administered by the State agency or under any other State or Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the

pandemic emergency unemployment compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State.

(B) Opportunity for hearing

No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(4) Review

Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

Iowa Code section 96.5(8) provides:

Administrative penalty. If the department finds that, with respect to any week of an insured worker's unemployment for which such person claims credit or benefits, such person has, within the thirty-six calendar months immediately preceding such week, with intent to defraud by obtaining any benefits not due under this chapter, willfully and knowingly made a false statement or misrepresentation, or willfully and knowingly failed to disclose a material fact; such person shall be disqualified for the week in which the department makes such determination, and forfeit all benefit rights under the unemployment compensation law for a period of not more than the remaining benefit period as determined by the department according to the circumstances of each case. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter.

Iowa Code section 96.16(4)(a) and (b) provides:

Misrepresentation.

a. An individual who, by reason of the nondisclosure or misrepresentation by the individual or by another of a material fact, has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in the individual's case, or while the individual was disqualified from receiving benefits, shall be liable to repay to the department for the unemployment compensation fund, a sum equal to the amount so received by the individual. If the department seeks to recover the amount of the benefits by having the individual pay to the department a sum equal to that amount, the department may file a lien with the county recorder in favor of the state on the individual's property and rights to property, whether real or personal. The amount of the lien shall be collected in a manner similar to the provisions for the collection of past-due contributions in section 96.14, subsection 3.

b. The department shall assess a penalty equal to fifteen percent of the amount of a *fraudulent* overpayment. The penalty shall be collected in the same manner as the overpayment. The penalty shall be added to the amount of any lien filed pursuant to paragraph "a" and shall not be deducted from any future benefits payable to the individual under this chapter. Funds received for overpayment penalties shall be deposited in the unemployment trust fund.

Iowa Code section 96.5(13) provides:

Overpayment resulting in disqualification. If the department finds that an individual has received benefits by reason of misrepresentation pursuant to section 96.16, such individual shall be disqualified for benefits until the balance of the benefits received by the individual due to misrepresentation, including all penalties, interest, and lien fees, is paid in full.

Iowa Admin. Code r. 871- 25.1 provides:

Definitions.

“Fraud” means the *intentional* misuse of facts or truth to obtain or increase unemployment insurance benefits for oneself or another or to avoid the verification and payment of employment security taxes; a false representation of a matter of fact, whether by statement or by conduct, by false or misleading statements or allegations; or by the concealment or failure to disclose that which should have been disclosed, which deceives and *is intended to deceive another* so that they, or the department, shall not act upon it to their, or its, legal injury.

“Misrepresentation” means to give misleading or deceiving information to or omit material information; to present or represent in a manner at odds with the truth.

[Emphasis added]

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness’s testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The weight of the evidence establishes the claimant knowingly, intentionally and brazenly underreported her earned wages and tips throughout the 24 weeks between December 27, 2020 and June 12, 2021 and was thereby overpaid \$9,204.00 PEUC benefits. During the hearing the claimant offered highly implausible and non-credible testimony regarding the employer allegedly inflating her tips amounts and about the claimant only reporting to IWD what the employer told her to report. Frankly, the claimant’s assertions in this regard were absurd. Based on the intentional misrepresentation of wages, a 15 percent penalty shall be added to the PEUC overpayment amount due. The overpayment plus penalty must be repaid before any further benefits may be paid. An administrative penalty shall be assessed in the 36 calendar months following the last week of misrepresentation.

DECISION:

The August 3, 2022, (reference 08) decision is AFFIRMED. The claimant was overpaid \$9,204.00 in Pandemic Emergency Unemployment Compensation (PEUC) for 24 weeks between December 27, 2020 and June 12, 2021, due to the claimant’s knowing and intentional underreporting of wages earned with Central Standard Waukee, L.L.C. Based on the intentional

misrepresentation of wages, a 15 percent penalty shall be added to the PEUC overpayment amount due. The overpayment plus penalty must be repaid before any further benefits may be paid. An administrative penalty shall be assessed in the 36 calendar months following the last week of misrepresentation.



James E. Timberland
Administrative Law Judge

October 6, 2022

Decision Dated and Mailed

jt/ac

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>.

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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.