

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

LOLISHA L FORTUNE
Claimant

APPEAL 24A-UI-05983-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/22/20
Claimant: Appellant (1)**

Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Code § 96.16(4) – Offenses and Misrepresentation
Iowa Admin. Code r. 871-25.1 – Misrepresentation & Fraud

STATEMENT OF THE CASE:

On June 8, 2024, claimant Lolisha L. Fortune filed an appeal from the June 5, 2024 (reference 04) unemployment insurance decision that found she was overpaid \$1,800.00 in federal Lost Wages Assistance Program (LWAP) benefits and imposed an administrative (non-monetary) penalty for misrepresentation. The hearing was initially scheduled at 9:00 a.m. on July 16, 2024. Ms. Fortune did not appear for that hearing due to a death in the family. When Ms. Fortune called in for the companion appeal hearing (24A-UI-05523) at 11:00 a.m. on July 16 and explained why she missed the earlier hearing, the record was reopened and this hearing was rescheduled.

The Unemployment Insurance Appeals Bureau mailed notice of the hearing on July 17, 2024. Administrative Law Judge Elizabeth A. Johnson held a telephonic hearing at 9:00 a.m. on Thursday, August 1, 2024. Appeal numbers 24A-UI-05981-LJ-T, 24A-UI-05982-LJ-T, and 24A-UI-05983-LJ-T were heard together and created one record. Claimant Lolisha L. Fortune personally participated. Iowa Workforce Development (IWD) participated through Daniel Noonan, Program Manager for Benefit Payment Control, UI Fraud Unit.

Claimant's Exhibit A was marked; it was not admitted because it was not provided to IWD. IWD Exhibits 1 through 12 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record to incorporate additional mainframe information, including DBRO, DBIN, KCCO, WAGE-A, KPY1, and KPYX.

ISSUES:

Whether Ms. Fortune was overpaid LWAP benefits.
Whether a penalty was properly imposed.

FINDINGS OF FACT:

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

Lolisha Fortune completed an application for PUA benefits on April 27, 2020. (Exhibit 6) On her application, Ms. Fortune listed an apartment in Sioux City as her current address. She identified herself as an unemployed, self-employed individual. IWD then issued claimant the April 27, 2020 determination that she was approved for PUA benefits effective March 22, 2020. (Exhibit 4-12)

Ms. Fortune filed ongoing weekly claims for the six-week period between July 26, 2020 and September 5, 2020. She received both PUA benefits and LWAP benefits each of these six weeks. Ms. Fortune's LWAP benefit amount was \$300.00 before any deductions for taxes.

On June 5, 2024, IWD issued a decision (reference 02) that found claimant was overpaid PUA benefits from March 22, 2020 through June 12, 2021 and imposed an administrative penalty for misrepresentation because claimant created a fictitious business to qualify for PUA benefits. That decision has been affirmed (see appeal number 24A-UI-05981-LJ-T).

Claimant received LWAP benefits in the amount of \$1,800.00 for the six-week period between July 26, 2020 and September 5, 2020.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.3(7) states:

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.

The decision that denied Ms. Fortune PUA benefits due to a fraudulent application remains in effect. Because Ms. Fortune is not eligible for UI benefits, she is also not eligible for LWAP benefits. Therefore, she has received LWAP benefits to which she was not entitled. The administrative law judge concludes that Ms. Fortune has been overpaid LWAP benefits in the amount of \$1,800.00. Those benefits must be recovered in accordance with Iowa law.

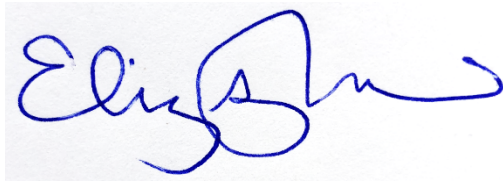
The next issue to be determined is whether an administrative penalty due to fraud was properly imposed. For the reasons that follow, the administrative law judge concludes:

Title 44 of the Code of Federal Regulations section 206.116(b) provides: 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.

Credible records from IWD prove Ms. Fortune applied for and was approved for PUA benefits. The basis of her PUA claim was that she was an in-home daycare operator whose daycare was adversely affected by the COVID-19 pandemic. The evidence in the record shows that claimant did not have a registered in-home daycare at the time of the pandemic or in the months prior. Ms. Fortune has offered no proof that she was operating an in-home daycare that would have been adversely affected by the COVID-19 pandemic. She has not presented any tax returns or receipts documenting income from any such business; she has not submitted any documentation that any children were attending this alleged daycare. Ms. Fortune fabricated a claim that this nonexistent business of hers was harmed by the COVID-19 pandemic for the purpose of reaping benefits she had no right to receive. She knew she was not operating a licensed, legitimate business, and she filed her PUA claim with these false assertions solely to obtain benefits she never would have received otherwise. I am convinced Ms. Fortune engaged in fraud. IWD properly imposed the administrative 36-month administrative penalty for misrepresentation.

DECISION:

The June 5, 2024 (reference 04) unemployment insurance decision is affirmed. Claimant was overpaid LWAP benefits in the amount of \$1,800.00, which must be repaid. The administrative (non-monetary) penalty was properly imposed for misrepresentation.



Elizabeth A. Johnson
Administrative Law Judge

August 7, 2024
Decision Dated and Mailed

lj/scn

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.