

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MARIA E RAMIREZ**  
Claimant

**APPEAL 22A-UI-07666-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 05/03/20  
Claimant: Appellant (1)**

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Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 421.17(27) – State Income Tax Refund Offset Authority  
Iowa Code § 8A.504 – Setoff Procedures (IDAS)  
Iowa Code § 96.11(16) – Reimbursement of Setoff Costs  
Iowa Admin. Code r. 871-25.16 – State Income Tax Refund Offset  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

Maria E Ramirez (claimant) filed an appeal from the March 3, 2022, reference 05, unemployment insurance decision that gave notice that claimant's 2021, Iowa income tax refund was going to be withheld to apply to an overpayment of unemployment insurance benefits, which the claimant owed to Iowa Workforce Development. After due notice was issued, a hearing was scheduled to be held by telephone conference call on May 5, 2022. The claimant participated. Exhibits D-1 and D-2 were received into the record.

**ISSUES:**

Whether the claimant's appeal is timely?

Whether there are reasonable grounds to find the claimant's appeal otherwise timely?

Is the withholding of the claimant's state income tax refund to offset a prior overpayment of benefits authorized?

**FINDINGS OF FACT:**

Having reviewed the administrative record, the administrative law judge finds:

An unemployment insurance decision dated May 29, 2021, reference 02, notified the claimant of an overpayment related to being disqualified from regular benefits due to not being able and available for work. The overpayment amount was \$916.00.

Iowa Workforce Development Department then modified this overpayment decision with an unemployment insurance decision dated February 11, 2022, reference 03. The overpayment

amount was reduced to \$137.40. The administrative record displaying information related to regular unemployment insurance benefits, KPY1, shows two payments were issued on June 2, 2020 and June 9, 2020, but these payments were cancelled. However, the administrative record shows \$45.80 in federal taxes and \$22.90 in state taxes were withheld from each of these payments for a total of \$137.40. The claimant did not appeal this decision, which became final.

An unemployment insurance decision dated February 11, 2022, reference 04, was also mailed to the claimant. This informed the claimant of an overpayment regarding Federal Pandemic Unemployment Compensation (FPUC) benefits totaling \$180.00. The administrative record displaying information related to FPUC benefits, KPYX, shows two payments were issued on June 2, 2020 and June 9, 2020, but these payments were cancelled. However, the administrative record shows \$60.00 in federal taxes and \$30.00 in state taxes were withheld from each of these payments for a total of \$180.00. The claimant did not appeal this decision, which became final.

The state treasurer has notified Iowa Workforce Development (IWD) that the claimant has an Iowa income tax refund for 2021 of at least \$50.00.

The following section describes the findings of facts necessary to resolve the timeliness of appeal issue:

This tax offsetting decision was mailed to claimant's last known address of record on March 3, 2022. The claimant did not receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 13, 2022. (Exhibit D-1) On March 14, 2022, the claimant's daughter informed her about this decision. The claimant was not at her residence because she was on vacation in California for the month of March. The appeal was not filed until March 30, 2022, which is after the date noticed on the disqualification decision. (Exhibit D-2)

#### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is not.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of issuance of the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving

section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. There is nothing in the record to show the delay in the claimant's appeal was due to error attributable to Iowa Workforce Development Department and the US Postal Service. The claimant was on vacation in March 2022. The claimant was informed in Spanish of the decision on March 14, 2022. She did not appeal until March 30, 2022. The claimant has not shown that reasonable grounds exist to toll the appeal period.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

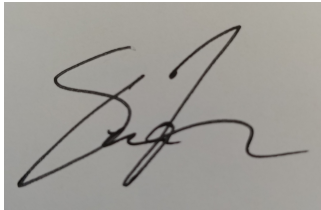
Assuming *arguendo* the claimant's appeal is timely, the administrative law judge concludes the withholding of the Iowa income tax refund to recover the prior overpayment is valid.

Iowa Code § 421.17(27), via the Iowa Department of Revenue, sets forth a procedure whereby one state agency may obtain funds owed by a second state agency to an individual to apply to a debt, which that same individual owes to the first state agency. Iowa Admin. Code r. 871-25.16 specifically authorizes IWD to withhold the state income tax refund owing to the claimant to apply to an overpayment of benefits which that same claimant owes to IWD so long as both amounts are at least \$50.00. Iowa Code § 96.11(16) allows reimbursement of setoff costs.

The claimant owes IWD \$317.40 in benefits she received in 2021, to which she was not entitled and she has an Iowa income tax refund of at least \$50.00. Therefore, IWD is legally authorized to withhold that Iowa income tax refund up to the amount of the overpayment of benefits, plus a \$7.00 transfer fee, which the claimant owes to IWD.

**DECISION:**

The unemployment insurance decision dated March 3, 2022, reference 05, is affirmed. IWD does have legal authority to withhold the Iowa income tax refund owed to the claimant to apply to the overpayment of benefits, which that individual owes to IWD.



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Sean M. Nelson  
Administrative Law Judge  
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May 24, 2022  
Decision Dated and Mailed

smn/kmj