

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

STEVEN R AIRD
Claimant

APPEAL NO. 10A-UI-02695-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Original Claim: 02-03-08
Claimant: Appellant (2)**

Iowa Code § 96.3(7) - Recovery of Benefit Overpayment
Iowa Code § 421.17(29) – Offset of State Income Tax Refund
871 IAC 25.16 – Offset of State Income Tax Refund

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 8, 2010, reference 01, decision that notified him that his state tax refund would be withheld due to his failure to repay an overpayment of unemployment insurance benefits. After due notice was issued, a hearing was scheduled to be held on April 10, 2010. After reviewing the administrative file and the claimant's appeal letter, the administrative law judge concluded that no additional testimony was needed and no hearing was held.

ISSUE:

Can the claimant's state tax refund be withheld to repay an overpayment and has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant had an overpayment of unemployment insurance benefits from a claim filed on February 2, 2008. The administrative file was updated on March 15, 2009 to reflect that the claimant has repaid the overpayment of benefits. Since the claimant has repaid the benefits, he is no longer overpaid and there are no grounds for withholding his state tax refund.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.3-7, as amended in 2008, provides:

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) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The administrative law judge concludes that the claimant has repaid all of the prior overpayment, thus he has no longer been overpaid unemployment insurance benefits and there is no reason to withhold his state tax refund.

DECISION:

The February 8, 2010, reference 01, decision is reversed. The claimant's state tax refund will not be withheld.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw