

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAREN K SMITH
Claimant

APPEAL 19R-UI-02291-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 04/21/13
Claimant: Appellant (4R)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-25.16 – Offset of State Income Tax Refund

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 24, 2019, (reference 08) unemployment insurance decision that gave notice that claimant's 2018 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 April 2, 2019. Claimant participated. Department's Exhibit D-1 was received.

ISSUES:

Is the withholding of the Iowa income tax refund to recover the prior overpayment valid?
If so, can the income tax refund be split?

FINDINGS OF FACT:

Having reviewed the administrative record, the administrative law judge finds: A representative's decision dated June 10, 2014, (reference 07) notified claimant of an overpayment related to her separation from employment with Transamerica Life Insurance. The overpayment amount was \$5,957.00. The claimant did not appeal the decision, which has become final.

The state treasurer has notified Iowa Workforce Development that the claimant has an Iowa income tax refund for 2018, of at least \$50.00. The state tax refund for 2018 was based in part on the income of claimant's spouse, Gary William Smith (5235).

On January 24, 2019, Iowa Workforce Development mailed a reference 08 decision to claimant notifying her it was going to withhold her overpayment from her Iowa income tax refund. Claimant called Iowa Workforce Development and informed the representative of her situation. The representative advised the claimant to file an appeal. On January 27, 2019, claimant filed an appeal stating that the refund was attributable to her husband. Claimant did not write directly to the Payment Control Section.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the withholding of the Iowa income tax refund to recover the prior overpayment is valid and if that tax refund can be split. The administrative law judge concludes that it is and it can.

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.

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.

The claimant owes Iowa Workforce Development \$5,957.00 in benefits she received in 2014, to which she was not entitled.

Iowa Admin. Code r. 871-25.16(1-5) provides:

State payment offset. An individual who is owed a payment from the state of at least \$50 and owes an overpayment of benefits of at least \$50 is subject to an offset against the individual's payment from the state to recover all or a part of the individual's overpayment of benefits and to reimburse the department of revenue for administrative costs to execute the offset. All overpayments, whether fraud or nonfraud, are included in this process.

(1) The individual's name and social security number are given to the department of revenue.

(2) The department of revenue notifies the department that an overpaid individual is owed a payment from the state. The department then notifies the overpaid individual of the potential offset against the individual's payment from the state.

(3) In the case of a joint or combined income tax filing, the individual has ten days from the postmark date on the decision to request a split of the refund to ensure the other party's portion of the refund is not offset. When a request is made, the department notifies the department of revenue to make the split. The department then notifies the overpaid individual of the amount of the offset. If the request for split of the refund is not made timely, the entire income tax refund becomes subject to offset.

(4) Any appeal by the individual is limited to the validity of the department's authority to recoup the overpayment through offset.

(5) In the event that the amount of the offset exceeds the remaining overpayment, the department shall issue to the individual a special check equal to the amount of the excess.

This rule is intended to implement Iowa Code section 96.11 and 421.17(26,29).

Iowa Admin. Code r. 871-25.16 specifically authorizes Iowa Workforce Development to withhold the state income tax refund owed to the claimant to apply to an overpayment of benefits which that same claimant owes to Iowa Workforce Development so long as both amounts are at least \$50.00. In this case, the overpayment and the tax refund both exceed \$50.00.

In the case of a joint income tax filing, the individual has ten days to request a split of the refund to ensure the other party's portion of the refund is not offset. In this case, claimant contacted Iowa Workforce Development after receiving the decision to discuss whether her joint income tax refund should be withheld due to the fact that most of the wages reported on her tax return were earned by her husband. An IWD representative advised claimant to file an appeal. Claimant did so within ten days of the postmark date on the decision and in her appeal requested the tax refund be divided proportionately. Claimant made a timely request to have the income tax refund divided proportionately.

DECISION:

The unemployment insurance decision dated January 24, 2019 (reference 08) is modified in favor of the claimant. The claimant has an established overpayment of benefits, but made a timely request to have her income tax refund split proportionately.

REMAND:

This matter is remanded to the Payment Control Section of Iowa Workforce Development to divide claimant's income tax refund proportionately.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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