

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGELA M GOLDEN**  
Claimant

**APPEAL NO. 16A-UI-03104-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 02/01/15**  
**Claimant: Appellant (1)**

871 IAC 25.16 – Income Tax Offset  
Iowa Code section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Angela Golden filed a late appeal from the February 25, 2016, reference 05, decision that a prior overpayment of unemployment insurance benefits would be withheld from her Iowa income tax refund. After due notice was issued, a hearing was held on March 29, 2016. Ms. Golden participated. Exhibit A and Department Exhibits D-1 and D-2 were received into evidence.

**ISSUE:**

Whether Iowa Workforce Development has authority to withhold the claimant's Iowa income tax refund to off-set or recover a prior overpayment of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has multiple outstanding overpayments of unemployment insurance benefits the current balances of which total \$3,133.60. The overpayments stem from the claimant's December 20, 2009 original claim date. The claimant has not made any attempt to repay the overpayments of benefits. Workforce Development has been able to recover a portion the original overpayment amounts through tax refund offsets in 2012, 2013, 2014, and 2015. The claimant filed a 2015 Iowa income tax return and was expecting a \$233.00 Iowa Income tax refund. The amount of the overpayment exceeds the amount of the Iowa income tax refund.

On February 25, 2016, Workforce Development mailed the February 25, 2016, reference 05, decision to Ms. Golden at her last-known address of record. The decision indicated Iowa Workforce Development was withholding Ms. Golden's tax refund to recover the prior overpayment of benefits. The decision indicated that an appeal from the decision must be postmarked by March 6, 2016 or received by the Appeals Section by that date. Ms. Golden did not receive her copy of the decision until March 7 or 8, 2016. The United States Postal Service had delivered the correspondence to a neighbor's mailbox and the neighbor was away. Ms. Golden received her copy of the decision when her neighbor returned and delivered the decision to Ms. Golden. On March 10, 2016, Ms. Golden filed an online appeal, which the Appeals Section received the same day.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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, subsection 10, 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 mailed to the claimant's last known address, 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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See 871 AC 24.35(1)(a). See also Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See 871 IAC 24.35(1)(b).

Ms. Golden's appeal was filed on March 10, 2016, when the Appeals Section received the online appeal she had filed that day.

The evidence in the record establishes 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 not have a reasonable opportunity to file an appeal by the March 6, 2016 deadline because she had not yet received the decision. The claimant received the decision on March 7 or 8, 2016 and filed an appeal within two or three days of receiving the decision. The delay in filing the appeal was attributable to the United States Postal Service misdirecting the mail. Accordingly, there is good cause to treat Ms. Golden's late appeal as a timely appeal. See 871 IAC 24.35(2). The administrative law judge had jurisdiction to enter a ruling on the merits of the appeal.

871 IAC 25.16 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 and finance for administrative costs to execute the offset. All overpayments, whether fraud or nonfraud, are included in this process.

(1) If the individual has made no attempt to repay the overpayment of benefits within the preceding six months, the individual's name and social security number are given to the department of revenue and finance.

(2) The department of revenue and finance 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 and finance 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 job service's authority to recoup the overpayment through offset.

Based on this rule and Iowa Code section 8A.504, the Agency has the authority to recoup the overpayment of benefits by offset against the claimant's Iowa state income tax refund. The outstanding overpayment was more than \$50.00, and no effort had been made to repay the overpayment within the last six months.

**DECISION:**

The February 25, 2016, reference 05, decision is affirmed. Iowa Workforce Development has authority to withhold the claimant's 2015 Iowa income tax refund to recover the outstanding benefit overpayments.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs