

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

**DONALD J. QUICK**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 22A-UI-18522-CS-T  
ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/28/20  
Claimant: Appellant (2)**

Iowa Code § 96.11(16) – Tax Refund Offset  
Iowa Code § 8A.504 – Setoff Procedures (IDAS)  
Iowa Code § 96.11(16) – Reimbursement of Setoff Costs  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On November 1, 2022, claimant filed an appeal from the May 12, 2022 (reference 04) unemployment insurance decision that allowed claimant's overpayment to be withheld from claimant's Iowa income tax refund. Claimant was properly notified of the hearing. The issue of whether this appeal is timely was not properly noticed and claimant's representative waived the ten-day notice. A telephone hearing was held on November 22, 2022. Claimant was not present. Prior to the hearing claimant submitted a document in writing authorizing his wife, Lynette Quick to represent him in the matter. Lynette Quick was present for the hearing. Official notice was taken of the administrative record including the reference 01, 02 and 03 decisions and administrative law judge decisions in appeal 22A-UI-10935-DH-T, 22A-UI-10936-DH-T and 22A-UI-10938-DH-T.

**ISSUES:**

- I. Is claimant's appeal timely?
- II. Whether claimant was overpaid benefits.
- III. Whether the agency can withhold the claimant's state income tax refund to offset an established overpayment of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on May 12, 2022. The appellant did not receive the decision. Claimant believed he was filing an appeal of the administrative law judge decisions in appeal 22A-UI-10936-DH-T and 22A-UI-10938-DH-T. This appeal was set up as a result of claimant's appeal. Claimant submitted the appeal November

1, 2022. The hearing was claimant's first notice Iowa Workforce Development was withholding their Iowa income tax refund.

A representative's decision dated August 23, 2021 (reference 02) notified claimant of an overpayment of Pandemic Emergency Unemployment Compensation (PEUC) benefits related to an ineligibility decision dated July 16, 2021 (reference 01). The PEUC overpayment amount is \$5,211.00. The claimant appealed the decision to an administrative law judge in appeal 22A-UI-10936-DH-T. The administrative law judge affirmed the PEUC overpayment decision.

A representative's decision dated August 23, 2021 (reference 03) notified claimant of an overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits related to an ineligibility decision dated July 16, 2021 (reference 01). The overpayment amount is \$3,300.00. The claimant appealed the decision to an administrative law judge in appeal 22A-UI-10938-DH-T. The administrative law judge affirmed FPUC overpayment decision.

Claimant believed he filed an appeal of the administrative law judge decisions in appeal 22A-UI-10936-DH-T and 22A-UI-10938-DH-T, however, he sent the appeal to the Department of Inspections and Appeals. Claimant is going to follow up regarding his appeal to the Employment Appeal Board. Claimant has filed for waivers of these overpayments and has not received a decision on whether they have been approved or denied.

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

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

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

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 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, 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 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 appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant's overpayment should be withheld from his Iowa income tax refund. The administrative law judge concludes the overpayment should not be withheld from claimant's Iowa income tax refund..

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.

Iowa Code § 8A.504(1)(2) provides, in pertinent part, the following setoff procedures:

f. (1) Upon notice of entitlement to a payment, the state agency shall send written notification to that person of the state agency's assertion of its rights to all or a portion of the payment and of the state agency's entitlement to recover the liability through the setoff procedure, the basis of the assertion, the opportunity to request that a jointly or commonly owned right to payment be divided among owners, and the person's opportunity to give written notice of intent to contest the amount of the allegation. The state agency shall send a copy of the notice to the collection entity. A state agency subject to chapter 17A shall give notice, conduct hearings, and allow appeals in conformity with chapter 17A.

Iowa Code § 96.11(16) provides:

16. Reimbursement of setoff costs. The department shall include in the amount set off in accordance with section 8A.504, for the collection of an overpayment created pursuant to section 96.3, subsection 7, or section 96.16, subsection 4, an additional amount for the reimbursement of setoff costs incurred by the department of administrative services.

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).

UIPL No. 20-21, pg. 7 states:

"Section 4.d. of UIPL No. 01-16:

States may not initiate recovery of an overpayment until an official determination of the overpayment has been made, consistent with Federal law requirements. States should have clear written procedures that provide for appropriate factfinding and independent verification of information as needed in the official determination process. State law may prohibit recovery of an overpayment until the overpayment determination, including any appeal, has become final under state law.

In addition, if state law provides for a waiver of recovery of an overpayment, the notice of the overpayment determination must provide enough information to enable the individual to understand under what circumstances a waiver may be granted and how to request such a waiver. (See UIPL No. 23-80.) Until the period for a waiver request has elapsed, or, if an individual applies for a waiver, the waiver determination is made, states may not

commence recovery of overpayments. State law may provide that if a request for a waiver is filed the state may not commence recovery of an overpayment until the decision on the waiver request, including any appeal, has become final under state law.”

The reference 02 and reference 03 overpayment decisions that found claimant was overpaid PEUC and FPUC benefits have not become final. Additionally, claimant has a pending waiver application filed to waive the PEUC and FPUC overpayments. Since the overpayment decisions have not become final and there is a pending waiver application, Iowa Workforce Development does not have authority to withhold the claimant’s state income tax refund.

**DECISION:**

The appeal is timely.

The May 12, 2022 (reference 04) unemployment insurance decision is REVERSED. Iowa Workforce Development does not have legal authority to withhold the Iowa income tax refund owed to claimant. The reference 02 and reference 03 overpayment decisions dated August 23, 2021 and the waiver application have not become final decisions. The decision to withhold the claimant’s income tax return is premature until the overpayment and waiver decisions have become final.



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Carly Smith  
Administrative Law Judge

November 29, 2022

Decision Dated and Mailed

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**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:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://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 adquiere 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.