

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TERESE C WALLACE**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 22A-UI-06517-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Filing – Timely Appeal  
Iowa Code § 96.11(16) – Reimbursement of Setoff Costs  
Iowa Code § 8A.504 – Setoff Procedures (IDAS)

**STATEMENT OF THE CASE:**

On March 15, 2022, Terese Wallace (claimant/appellant) appealed the Iowa Workforce Development (IWD) decision dated February 24, 2022 (reference 03) that determined an outstanding unemployment insurance benefits overpayment would be withheld from claimant's Iowa income tax refund.

A telephone hearing was held on April 26, 2022, pursuant to due notice. Claimant participated personally. The administrative law judge determined the proposed exhibits claimant submitted were not relevant to the issues before him and as such did not admit them into evidence. Official notice was taken of the administrative record.

**ISSUES:**

Was the appeal timely?

Can the agency withhold the claimant's state income tax refund to offset an established overpayment of unemployment insurance benefits?

**FINDINGS OF FACT:**

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

Decisions dated March 10, 2022 found claimant was overpaid unemployment insurance benefits (UI), Federal Pandemic Unemployment Compensation (FPUC), Pandemic Emergency Unemployment Compensation (PEUC), and Lost Wage Assistance Payments (LWAP). The overpayments of FPUC, PEUC, and LWAP were subsequently waived. Claimant still has an outstanding overpayment of UI in the amount of \$2,459.62. See 22A-UI-06520-AD-T. Claimant was expecting an Iowa income tax refund of at least \$50.00 for the 2021 tax year.

The Unemployment Insurance Decision was mailed to claimant at the above address on February 24, 2022. That was claimant's correct address at that time.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by March 6, 2022. However, if the due date falls on a Saturday, Sunday or legal holiday, the appeal period is extended to the next working day. Claimant appealed the decision on March 15, 2022.

The delay in appealing was due to claimant not receiving the decision. Claimant was unaware her taxes would be withheld until she received a similar notification dated March 12, 2022. Around the same time she received decisions finding she was overpaid benefits and appealed at that time.

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

For the reasons set for the below, the administrative law judge concludes the appeal was timely. The decision dated February 24, 2022 (reference 03) that determined an outstanding unemployment insurance benefits overpayment would be withheld from claimant's Iowa income tax refund is AFFIRMED.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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."

Iowa Admin. Code r. 871-24.35(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
  - (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is 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.
  - (b)
  - (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa

1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that “the submission of any ...appeal...not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.”

The record in this case indicates that claimant never received the decision. Therefore, the appeal notice provisions were invalid and claimant did not have a reasonable opportunity to file a timely appeal. Claimant filed the appeal shortly after learning of the decision denying benefits. This is a good cause reason for delay and the administrative law judge therefore concludes the appeal is timely. Because the appeal is timely, the administrative law judge has jurisdiction to address the underlying issues.

Iowa Code §8A.504 provides in relevant part:

2. Setoff procedure. The collection entity shall establish and maintain a procedure to set off against any claim owed to a person by a public agency any liability of that person owed to a public agency, a support debt being enforced by the child support recovery unit pursuant to chapter 252B, or such other qualifying debt.

Iowa Code § 96.11(16) provides:

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

25.16(1) The individual's name and social security number are given to the department of revenue.

25.16(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.

25.16(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.

25.16(4) Any appeal by the individual is limited to the validity of the department's authority to recoup the overpayment through offset.

25.16(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 sections 96.11 and 421.17(26,29).

Iowa Code section 421.17(27) 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 Iowa Workforce Development to withhold the state income tax refund owing 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. Iowa Code section 96.11(16) allows reimbursement of setoff costs.

Claimant has an outstanding overpayment of UI in the amount of \$2,459.62 and is expecting an Iowa income tax refund of at least \$50.00 for the 2021 tax year. Therefore, Iowa Workforce Development is legally authorized to withhold that Iowa income tax refund up to the remaining amount of the overpayment of benefits, not including a \$7.00 transfer fee, which the claimant owes to Iowa Workforce Development.

**DECISION:**

The administrative law judge concludes the appeal was timely. The decision dated February 24, 2022 (reference 03) that determined an outstanding unemployment insurance benefits overpayment would be withheld from claimant's Iowa income tax refund is **AFFIRMED**. The agency has the authority to withhold the claimant's state income tax refund to offset an established overpayment of unemployment insurance benefits.



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Andrew B. Duffelmeyer  
Administrative Law Judge

April 28, 2022  
Decision Dated and Mailed

abd/abd