

IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS SECTION  
1000 EAST GRAND—DES MOINES, IOWA 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

TIMOTHY B BISSETT  
3848 NE 14<sup>TH</sup> ST TRAILER 21  
DES MOINES IA 50313-3868

IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT

VICKI RAMIREZ  
UISC  
150 DES MOINES ST  
DES MOINES IA 50309

Appeal Number: 04A-UI-03846-SWT  
OC 04/14/96 R 02  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

871 IAC 25.16 - Income Tax Offset –Spousal Split

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 5, 2004, reference 03, that notified the claimant that his joint income tax refund would not be divided proportionally to apply to an outstanding overpayment of unemployment insurance benefits. A telephone hearing was held on May 25, 2004. The claimant participated in the hearing.

FINDINGS OF FACT:

An unemployment insurance decision was issued on February 2, 2004 (reference 02), that concluded that the claimant's income tax refund was being withheld to apply to an outstanding overpayment of unemployment insurance benefits. The decision notified the claimant that if he filed a joint or combined income tax return, he or his wife could request that the income tax refund be divided proportionally as long as the request was mailed or faxed within ten days after the date of the decision.

The claimant never received the decision in the mail. Sometime around March 31, 2004, the claimant inquired as to why he had not received his tax refund. He was informed that the refund had been applied to his unemployment insurance overpayment. On April 1, 2004, the claimant filed a request the income tax refund be split proportionally so his wife, Linda K. Bissett, would receive her share of the refund.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant filed a timely request to have his income tax refund split between him and his wife.

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.

(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).

The claimant is deemed to have filed a timely request to have the income tax refund split so that his wife receives her proportional share of the refund.

DECISION:

The unemployment insurance decision dated April 5, 2004, reference 03, is reversed. The claimant filed a timely request to have the income tax refund split so that his wife receives her proportional share of the refund. The Agency is required to take whatever action is necessary to make sure that the claimant's wife receives her proportional share of their income tax refund.

saw/kjf