

**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**

**DANIEL J KANE
3220 NEOLA ST
CEDAR FALLS IA 50613**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Appeal Number: 06A-UI-04713-DT
OC: 10/07/01 R: 03
Claimant: Appellant (1)**

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

871 IAC 25.16 – Income Tax Offset
Section 421.14 and 17(29) – Income Tax Offset
Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Daniel J. Kane (claimant) appealed a representative's April 24, 2006 decision (reference 02) that concluded the claimant's prior overpayment of unemployment insurance benefits was being withheld from the claimant's Iowa income tax refund. A hearing notice was mailed to the claimant's last-known address of record for a telephone hearing to be held on May 16, 2006. The claimant participated in the hearing. Based on a review of the information in the administrative file, the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

A representative's decision was issued on April 5, 2002, reference 05 that concluded the claimant was eligible to receive unemployment insurance benefits after a separation from employment from GMAC Mortgage Corporation of PA (employer). The employer appealed that decision, and an appeal hearing was held before an administrative law judge on May 3, 2002 in which the claimant did not participate but for which he submitted a written statement in lieu of participation. On May 8, 2002, the administrative law judge issued a decision under 02A-UI-04639-HT that concluded the claimant was disqualified and was overpaid \$2,264.00 in unemployment insurance benefits because of the disqualification.

The claimant timely appealed that decision to the Employment Appeal Board; on June 20, 2002, the Board issued its decision affirming the disqualification and the overpayment. The claimant did not appeal the Board's decision.

The claimant's benefit overpayment has been offset against his income tax refunds in 2003, 2004, and 2005. The claimant's overpayment balance as of the date of the hearing was \$1,431.00. The claimant has made no effort to repay that balance within the last six months. The claimant's expected income tax refund is \$266.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this appeal hearing is whether the Agency has the authority to recover a prior overpayment of unemployment insurance benefits by an income tax offset. The claimant did not timely appeal the decision that caused the overpayment in this case. If the claimant had a dispute with whether or not he should have been disqualified or been found overpaid, then he needed to have filed an appeal from that decision. The decision causing the disqualification and overpayment at this point are deemed final and are not subject to review in this case. Beardslee v. Iowa Department of Job Service, 276 N.W.2d 373 (Iowa 1979).

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

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's overpayment balance exceeds \$50.00, the claimant has made no effort to repay that within the last six months, and the claimant's expected refund exceeds \$50.00. The Agency does have the authority to withhold an Iowa income tax refund to offset a prior overpayment of unemployment insurance benefits.

DECISION:

The representative's April 24, 2006 decision (reference 02) is affirmed. The claimant's Iowa income tax refund may be withheld to recover the prior overpayment of unemployment insurance benefits.

ld/pjs