

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BENJAMIN V PEREZ**  
Claimant

**APPEAL NO. 08A-UI-02965-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 11/26/06 R: 04  
Claimant: Appellant (1)**

Section 96.3(7) – Recovery of Overpayments  
Section 871 IAC 25.16 – Income Tax Offset  
Section 96.6(2) – Timeliness of Appeals

**STATEMENT OF THE CASE:**

Benjamin Perez filed an appeal from a representative's decision dated March 13, 2008, reference 03, which advised that his Iowa income tax refund was being withheld to repay an overpayment of job insurance benefits. After due notice was issued, a hearing was held by telephone on April 9, 2008. Mr. Perez participated personally. Ike Rocha participated as the interpreter.

**ISSUE:**

The first issue is whether Mr. Perez' appeal should be considered timely filed. If it is, the issue then becomes whether his Iowa income tax refund should be withheld to repay a prior overpayment of job insurance benefits.

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: The representative's decision that is the subject of this appeal was mailed to Mr. Perez at his address of record on March 13, 2008. He received the decision prior to the March 23, 2008 appeal deadline. Because the due date fell on a Sunday, it would be extended to the following Monday, March 24. Mr. Perez filed his appeal on March 25. He believed he had to go to his local Workforce Development office to appeal and did not have transportation to the Muscatine office until March 25.

Mr. Perez filed a claim for job insurance benefits effective November 26, 2006. He was notified in a decision dated January 9, 2007 that he had been overpaid \$1,516.00 in job insurance benefits because of a decision that disqualified him as not being available for work. A check was issued to Mr. Perez in the net amount of \$644.30 for the weeks ending December 2 and December 9, 2006. A check was issued to him in the same amount for the weeks ending December 16 and December 23. Mr. Perez' weekly job insurance benefit amount was \$379.00 but he was having state and federal taxes withheld.

The two checks that were issued to Mr. Perez were cancelled and, therefore, no benefits were paid directly to him. The current overpayment balance is \$227.40, which represents amounts withheld from his job insurance benefits as state and federal taxes. There have been no credits or payments against the overpayment since January of 2007. Mr. Perez' Iowa income tax refund is at least \$50.00.

**REASONING AND CONCLUSIONS OF LAW:**

Mr. Perez had ten days in which to appeal the decision at issue. See Iowa Code section 96.6(2). The administrative law judge believes a language barrier played a role in his failure to file his appeal by the designated due date of March 24. For this reason, the appeal filed on March 25 shall be deemed timely filed.

The next issue is whether Mr. Perez' Iowa income tax refund should be withheld to repay a prior overpayment. He disputes that he was overpaid as he did not receive benefits after filing his claim effective November 26, 2006. It is true that no benefits were paid directly to him. However, he was having taxes withheld from his benefits. Once those amounts were deducted from his job insurance benefits, they were forwarded on to the appropriate taxing authorities. Workforce Development cannot retrieve the funds from the taxing authorities. Therefore, Mr. Perez is responsible for paying the \$227.40 that was withheld as taxes.

Mr. Perez has, in fact, been overpaid job insurance benefits as stated above. All other conditions necessary to recover the overpayment from his Iowa income tax refund have been met. Both the overpayment and the refund are for at least \$50.00. There is no repayment plan in effect and there have been no payments or credits against the overpayment for over one year. For the above reasons, Workforce Development is authorized to withhold the overpayment from Mr. Perez's Iowa income tax refund.

**DECISION:**

The representative's decision dated March 13, 2008, reference 03, is hereby affirmed. Iowa Workforce Development is authorized to withhold Mr. Perez' overpayment from his Iowa income tax refund.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/css