

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JASPER R KIER**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 17A-UI-03379-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/26/13  
Claimant: Appellant (1)**

Iowa Code § 96.6-2 – Timeliness of Appeal  
Iowa Code §96.3(7) - Recovery of Benefit Overpayment  
Iowa Code §421.17(29) – Offset of State Income Tax Refund  
871 IAC 25.16 - Offset of State Income Tax Refund

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 9, 2017, (reference 07) decision that gave notice that claimant's 2016 Iowa income tax refund was going to be withheld to apply to an overpayment of unemployment insurance benefits, which the claimant owed to Iowa Workforce Development. After due notice was issued, a hearing was scheduled to be held by telephone conference call on April 25, 2017. The claimant did participate.

**ISSUES:**

Did the claimant file a timely appeal?

Can the agency withhold the claimant's state income tax refund to offset a prior overpayment of benefits?

**FINDINGS OF FACT:**

Having reviewed the administrative record, the administrative law judge finds: A decision of the Employment Appeal Board (EAB) issued on October 8, 2013 in appeal number 13B-UI-0992 found the claimant overpaid unemployment insurance benefits. That decision was never appealed to the Iowa District Court and has become final. The claimant initially owed the agency \$1,994.00. He currently still owes the agency \$1,492.00. The claimant has not made any payments to the agency on his overpayment of benefits. Any reduction in his balance has been due to the agency keeping his State of Iowa Income tax refund.

The state treasurer has notified the Iowa Workforce Development Department that the claimant has an Iowa income tax refund for 2016 of at least \$50.00.

The claimant's wife opened the mail and because she does not read English she did not understand the necessity of a timely appeal. She did not give the decision to the claimant until after the time for appeal had expired. The claimant filed an appeal as soon as he received the decision.

## REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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, subsection 10, 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 claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed the appeal within days of receipt. Therefore, the appeal shall be accepted as timely.

The issue is whether the withholding of the Iowa income tax refund to recover the prior overpayment is valid. The administrative law judge concludes that it is.

Iowa Code §421.17(29) 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. 871 IAC 25.16 specifically authorizes the Iowa Workforce Development Department to withhold the state income tax refund owing to the claimant to apply to an overpayment of benefits which that same claimant owes to the Iowa Workforce Development Department so long as both amounts are at least \$50.00. Iowa Code § 96.11(16) allows reimbursement of setoff costs. The claimant currently owes the Iowa Workforce Development Department \$1,492.00 in benefits he received in 2013 to which he was not entitled

and he has an Iowa income tax refund of at least \$50.00. Therefore, the Iowa Workforce Development Department is legally authorized to withhold that Iowa income tax refund up to the amount of the overpayment of benefits, plus a \$7.00 transfer fee, which the claimant owes to the Iowa Workforce Development Department.

**DECISION:**

The representative's decision dated March 9, 2017, (reference 07) is affirmed. The claimant did file a timely appeal. The Iowa Workforce Development Department has legal authority to withhold the Iowa income tax refund owed to the claimant to apply to the overpayment of benefits, which that individual owes to the Iowa Workforce Development Department.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/rvs