

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIMBERLY A COOK**  
Claimant

**APPEAL NO: 14A-UI-03070-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 11/09/08**  
**Claimant: Appellant (1)**

871IAC25.16 – Income Tax Offset  
Section 421.14 and 17(29) – Income Tax Offset  
Section 96.3-7 – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Kimberly A. Cook (claimant) appealed a representative's March 17, 2014 decision (reference 05) 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 April 14, 2014. A review of the Appeals Section's conference call system indicates that the claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Based on a review of the available information and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Does the Agency have the authority in this case to recover a prior overpayment of unemployment insurance benefits by an income tax offset?

**FINDINGS OF FACT:**

A representative's decision was issued on September 9, 2009, reference 04, that concluded the claimant was overpaid \$312.00 because of failing to report wages earned with Reach For Your Potential for the week ending June 6, 2009. The claimant did not timely appeal that decision and it has become final.

The claimant received multiple notifications in 2009, 2010, 2011, and 2012 that her income tax refund could be withheld to recover the overpayment. Upon receiving one of the notifications issued on October 16, 2009, the claimant had returned a statement in which she signed an agreement to pay \$40.00 per month starting November 15, 2009; however, no payments were received from the claimant. The claimant's overpayment balance as of the date of the hearing was \$312.00. The claimant has made no effort to repay that balance within the last six months. The claimant's expected income tax refund is \$234.00.

In her appeal the claimant asserted that she had repaid the overpayment in June and July 2012. However, what the claimant may have paid to the State of Iowa in 2012 was not her overpayment of unemployment insurance benefits, but was a payment of her state income tax liability.

#### **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 she should have been disqualified or been found overpaid, then she needed to have filed an appeal from that decision within the appeal period for that decision. The decision causing the disqualification and overpayment has now become final and is not subject to review in this case. *Beardslee v. Iowa Department of Job Service*, 276 N.W.2d 373 (Iowa 1979).

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. Iowa Code § 96.3-7.

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 March 17, 2014 decision (reference 05) is affirmed. The claimant's Iowa income tax refund may be withheld to recover the prior overpayment of unemployment insurance benefits.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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