

**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**

**DANA M GILBERT  
900 – 14<sup>TH</sup> PL  
CAMANCHE IA 52730**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**Appeal Number: 04A-UI-03243-B4T  
OC: 03-28-93 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, 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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.3-7 – Overpayment  
871 IAC 25.16 – Withholding of State Income Tax Refund  
871 IAC 25.16(3) – Payment Offset  
Iowa Code Section 421.17(29) – Procedure to Offset Claim

STATEMENT OF THE CASE:

Dana M. Gilbert appealed from an unemployment insurance decision dated March 16, 2004, reference 01, that held, in effect, the overpayment of unemployment insurance benefits is being withheld from your Iowa income tax refund. Explanation of the decision was that if the amount of your tax refund exceeds your overpayment plus the Iowa Department of Administrative Services \$5.00 transfer fee, the excess will be sent to you by the Department of Administrative Services.

A telephone conference hearing was scheduled and held on April 8, 2004. Dana M. Gilbert, formerly known as Dana M. Luke, participated. Official notice was taken of the unemployment insurance decision dated March 16, 2004, reference 01, together with the pages attached thereto (8 pages in all).

**FINDINGS OF FACT:**

Dana M. Gilbert filed an initial claim for benefits having an effective date of March 28, 1993. Subsequently a decision of the representative dated April 19, 1993, reference 01, was mailed to Dana M. Gilbert and Cardinal Community School District.

Said decision held, in effect, Dana M. Gilbert voluntarily left her employment with Cardinal Community School District on July 2, 2003 without good cause attributable to the employer. Unemployment insurance benefits were denied.

Subsequently a decision of the representative dated March 8, 1993, reference 02, was dated and mailed to the claimant. Said decision held, in effect, Dana M. Gilbert was overpaid \$400.00 for the two week period from March 29, 1983 through April 18, 1993 because of the disqualifying decision that held she voluntarily left her employment with Cardinal Community School District.

The administrative record disclosed that the overpayment in the amount of \$400.00 is still due and owing. The claimant had originally been employed with the Cardinal Community School District. On February 2, 1993, the claimant left her employment with Cardinal Community School District and moved to a new locality in Columbia, South Carolina, with her husband who had been transferred. The claimant recently returned to Camanche, Iowa, and filed an Iowa income tax return. The claimant is entitled to a tax refund in excess of \$400.00 plus a \$5.00 transfer fee of the Iowa Department of Administrative Services.

**REASONING AND CONCLUSIONS OF LAW:**

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).

871 IAC 25.16(3) 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.

(3) In the case of a joint 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 the split of the refund is not made timely, the entire income tax refund becomes subject to offset.

The evidence in the record clearly establishes that the claimant filed an Iowa income tax return for the calendar year 2003 and is entitled to a refund in excess of the \$400.00 overpayment amount due together with a \$5.00 transfer fee.

Under such circumstances the record justifies a conclusion that the Iowa income tax refund due to the claimant in addition to a \$5.00 transfer fee may be utilized to offset the overpayment determination in the amount of \$400.00 as shown by the decision dated June 8, 1993, reference 02.

DECISION:

The administrative law judge concludes that the decision dated March 16, 2004, reference 01, should be affirmed. The Iowa income tax refund due Dana M. Gilbert, formerly known as Dana M. Luke, may be withheld to offset the overpayment determination of \$400.00 plus the \$5.00 transfer fee all within the intent and meaning of the foregoing sections of the Iowa Code and Iowa Administrative Code.

tjc/b