

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KYLE L KINARD
Claimant

APPEAL 23A-UI-10249-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 08/10/14
Claimant: Appellant (1)

Iowa Code § 8A.504 – Set-off Procedures
Iowa Admin. Code r. 871—25.16 – Vendor Payment Offset
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On October 26, 2023, the claimant filed an appeal from the September 20, 2023, (reference 01) unemployment insurance decision that stated Iowa Workforce Development (IWD) was withholding \$2,375.00 from claimant's Iowa lottery prize to offset an outstanding overpayment balance of \$6,099.16. The parties were properly notified about the hearing. A telephone hearing was held on November 16, 2023. Claimant, Kyle L. Kinard, participated, with witness Shanna Craven. The agency, IWD, did not participate. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Is claimant's appeal timely?
Does Iowa Workforce Development have authority to withhold claimant's gambling prize money to offset it against an outstanding overpayment balance?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: In September 2023, claimant won \$2,375.00, after taxes, at the casino. When claimant attempted to collect his winnings, the casino staff provided claimant with written notice that IWD was withholding the net amount of the winnings to be applied against an outstanding overpayment balance, and a \$7.00 administrative transfer fee.

The administrative record indicates that, on September 1, 2015, IWD issued an unemployment insurance decision that determined claimant was overpaid \$5,286.00 in unemployment insurance benefits. That decision was not appealed. Claimant indicated he had not received a decision from IWD notifying him of an overpayment. Instead, he had received a number of overpayment statements notifying him that there was a balance owed. Claimant took no action to understand that origin of the overpayment statements. He last received such a statement before he moved to his current address, sometime in 2020. As of the time at which he won his gambling prize, the outstanding overpayment amount was \$6,099.16 due to penalties.

An unemployment decision was mailed to claimant's last known address of record on September 20, 2023. Claimant did not receive that decision. The decision warned that an appeal was due by September 30, 2023. An appeal was not filed until October 26, 2023. The decision was mailed to an address that claimant last lived at in August 2020. Claimant had not updated his mailing address with IWD, but he was unaware that he needed to. He does not expect to be eligible for unemployment insurance benefits in the future, and last filed for benefits in 2017. Though he received overpayment benefit statements at the address of record sometime before he moved, he did not understand that he needed to keep IWD apprised of his current address given how remote in time his last claim for benefits was.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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

Iowa Code section 96.6(2) provides, in pertinent part: “[u]nless 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.”

Iowa Admin. Code r. 871—24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871—24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

The appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a decision, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed an appeal within a reasonable period of time after discovering the decision. Therefore, the appeal shall be accepted as timely.

Iowa Code section 8A.504 provides a procedure for state agencies "to set off against any claim owed to a person by a state agency any liability of that person owed to a state agency." Iowa Code section 96.11(16) directs Iowa Workforce Development to assess "an additional amount for the reimbursement of setoff costs incurred by the department of administrative services."

Iowa Administrative Code rule 871—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 for administrative costs to execute the offset. All overpayments, whether fraud or nonfraud, are included in this process.

(1) The individual's name and social security number are given to the department of revenue.

(2) The department of revenue 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 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 the department'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 section 96.11 and 421.17(26,29).

The claimant was owed a net wagering prize payment from the state of \$2,375.00 at a time when he had a \$6,099.16 outstanding unemployment insurance overpayment. Iowa Workforce Development complied with the off-set procedure set forth at Iowa Code section 8A.504. Iowa Workforce Development had authority to offset the claimant's \$2,375.00 net gambling prize pot against the \$6,099.16 outstanding overpayment and a \$7.00 administrative transfer fee.

DECISION:

The claimant's appeal is accepted as timely. The September 20, 2023 (reference 01) decision is AFFIRMED. Iowa Workforce Development had legal authority to withhold and offset the claimant's \$2,375.00 net gambling prize pot against the \$6,099.16 outstanding overpayment unemployment insurance overpayment and a \$7.00 administrative transfer fee.



Alexis D. Rowe
Administrative Law Judge

November 21, 2023
Decision Dated and Mailed

ar/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.