

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

LAURIE L. ALLEN
Claimant

APPEAL 22A-UI-09245-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 04/05/20
Claimant: Appellant (4)**

Iowa Code § 8A.504 – Setoff Procedures
Iowa Admin. Code r. 871-25.16 – State Payment Offset
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

On April 12, 2022, the claimant filed an appeal from the April 11, 2022, (reference 12) unemployment insurance decision that retained a lottery prize to offset against a prior overpayment of unemployment insurance benefits. After due notice was issued, a hearing was held on May 24, 2022. The claimant participated.

ISSUES:

- I. Was claimant overpaid benefits?
- II. Can the claimant's lottery prize be withheld to repay an overpayment of unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant owes Iowa Workforce Development (IWD) \$17,986.11 in unemployment insurance benefits paid during the April 5, 2020, claim year to which she was not entitled. Of the amount owed claimant owes IWD \$412.11 in state unemployment benefits due to the decision dated November 2, 2021, Ref. 06. The decision found claimant was overpaid state unemployment benefits due to a decision that disqualified claimant for voluntarily leaving her employment with UP Properties II, LLC. Claimant appealed the separation decision in appeal 21A-UI-13151-LJ-T. The administrative law judge affirmed the decision. The claimant appealed the decision to the Employment Appeal Board (EAB). The EAB affirmed the decision in appeal 21B-UI-13151. The claimant did not appeal the November 21, 2021, Ref. 05, unemployment insurance decision, finding her overpaid unemployment insurance benefits, and that decision has become final.

The claimant also owes IWD \$2,492.00 in state unemployment benefits due to an overpayment decision dated December 15, 2021, Ref. 09. The decision found claimant was overpaid \$2,492.00 for 21 weeks between April 12, 2020 through September 12, 2020, due to the Administrative Law

Judge's decision in appeal 21A-UI-22044-AD-T, dated December 9, 2021, which found claimant was not able to and available for work. Claimant did not appear for the hearing and the claimant filed an appeal to the EAB. The EAB remanded the case back for hearing. A hearing has been held in appeal 22R-UI-05470, but a decision has not been issued.

The remaining balance is for federal benefits from the programs PEUC, FPUC and LWAP. On March 17, 2022, claimant has applied for a waiver of the federal overpayment amounts. The waiver has not been determined at this time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set for the below, the decision dated April 11, 2022 (reference 12) that determined an outstanding unemployment insurance benefits overpayment would be withheld from claimant's Iowa income tax refund is MODIFIED in favor of appellant.

Iowa Code § 8A.504 provides in relevant part:

2. Setoff procedure. The collection entity shall establish and maintain a procedure to set off against any claim owed to a person by a public agency any liability of that person owed to a public agency, a support debt being enforced by the child support recovery unit pursuant to chapter 252B, or such other qualifying debt.

Iowa Code § 96.11(16) provides:

Reimbursement of setoff costs. The department shall include in the amount set off in accordance with section 8A.504, for the collection of an overpayment created pursuant to section 96.3, subsection 7, or section 96.16, subsection 4, an additional amount for the reimbursement of setoff costs incurred by the department of administrative services.

Iowa Admin. Code 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.

25.16(1) The individual's name and social security number are given to the department of revenue.

25.16(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.

25.16(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.

25.16(4) Any appeal by the individual is limited to the validity of the department's authority to recoup the overpayment through offset.

25.16(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).

Section 4.d. of UIPL No. 01-16 provides:

States may not initiate recovery of an overpayment until an official determination of the overpayment has been made, consistent with Federal law requirements. States should have clear written procedures that provide for appropriate factfinding and independent verification of information as needed in the official determination process. State law may prohibit recovery of an overpayment until the overpayment determination, including any appeal, has become final under state law.

In addition, if state law provides for a waiver of recovery of an overpayment, the notice of the overpayment determination must provide enough information to enable the individual to understand under what circumstances a waiver may be granted and how to request such a waiver. (See UIPL No. 23-80.) Until the period for a waiver request has elapsed, or, if an individual applies for a waiver, the waiver determination is made, states may not commence recovery of overpayments. State law may provide that if a request for a waiver is filed the state may not commence recovery of an overpayment until the decision on the waiver request, including any appeal, has become final under state law.

Iowa Code section 8A.504 sets forth a procedure whereby one state agency may obtain funds owed by a lottery entity to an individual, to apply to an amount owed to a state agency. Iowa Admin. Code r. 871-25.16 specifically authorizes the Iowa Workforce Development Department to withhold lottery or other prize winnings under certain circumstances. The agency has complied with the provisions.

The administrative law judge finds the agency does have the authority to withhold the claimant's lottery prize up to \$ 412.11 plus the \$7.00 transfer fee, to offset the established overpayment of UI. The November 21, 2021, Ref. 06, decision that found claimant was overpaid \$412.11, and the underlying decision that disqualified claimant from benefits has become final and is collectable.

The record indicates an appeal in 22R-UI-05470 is still pending to determine whether claimant should receive state unemployment benefits. The administrative law judge's decision in appeal 21A-UI-22044-AD-T led to the December 15, 2021, ref. 09, \$2,492.00 UI overpayment. The appeal that led to the overpayment has not become final and is not collectible at this time.

The record indicates IWD has not yet issued a determination on claimant's application for waiver of the PEUC, FPUC, and LWAP overpayment amounts. As set forth above, Department of Labor guidance prohibits states from commencing recovery of CARES Act overpayments until a waiver determination is made. As such the state may not withhold claimant's state income tax refund to offset the PEUC and FPUC overpayments until IWD has issued a determination on claimant's request for waiver of CARES Act overpayments.

DECISION:

The decision dated April 11, 2022 (reference 12) that determined an outstanding unemployment insurance benefits overpayment would be withheld from claimant's Iowa Lottery Prize is MODIFIED in favor of appellant.

The administrative law judge finds the agency does have the authority to withhold the claimant's Iowa Lottery prize, including a \$7.00 transfer fee, to offset the established overpayment of UI in the amount of \$412.11.

IWD may not withhold claimant's Iowa Lottery prize to offset the FPUC, PEUC, and LWAP benefits overpayments until IWD has issued a determination on claimant's request for waiver of those overpayments.

Additionally IWD shall not withhold claimant's Iowa Lottery prize to offset the remaining state unemployment benefits overpayments until the remaining appeals have been determined and become final.



Carly Smith
Administrative Law Judge

July 25, 2022
Decision Dated and Mailed

cs/lj

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:

Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
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:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
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 adquiera 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.