

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAULINE MONTGOMERY
Claimant

APPEAL 17A-UI-02285-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 08/01/04
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 2, 2017, (reference 08) unemployment insurance 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 March 23, 2017. Claimant participated with her spouse Norman Montgomery, who also acted as her representative. Department's Exhibit D-1 was received.

ISSUES:

Is the appeal timely?
Is the withholding of the Iowa income tax refund to recover the prior overpayment valid?
If so, can the income tax refund be split?

FINDINGS OF FACT:

Having reviewed the administrative record, the administrative law judge finds: the decision notifying claimant of an income tax refund offset was mailed to the claimant on February 2, 2017. She received it within ten days and called IWD customer service and was told to fax information to 515-242-0494, which is an incorrect number for the Appeals Bureau. The claimant also tried to fax it to a different number that was inoperable. The claimant has been able to get the tax offset split issue resolved by customer service in past years and thought it would be handled the same way this year when they called but it was not. By the time that issue and the fax number issues were resolved, the appeal deadline had passed.

An Employment Appeal Board decision dated April 7, 2005, notified claimant of an overpayment related to her ability to work. The overpayment amount was \$2480.00, and is now \$1642.00. The claimant did not appeal the decision, which has become final. The state treasurer has notified Iowa Workforce Development that the claimant has an Iowa income tax refund for 2016,

of at least \$50.00. The state tax refund for 2016 was based solely on the income of claimant's spouse, Norman Montgomery.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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's attempt to file an appeal in a timely manner was thwarted by the incorrect fax line provided by IWD customer service, an inoperable fax number and was not due to delay by the party. The appeal was filed within a reasonable time thereafter. Therefore, the appeal shall be accepted as timely.

Iowa Code section 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. Iowa Admin. Code r. 871-25.16 specifically authorizes Iowa Workforce Development to withhold the state income tax refund owed to the claimant to apply to an overpayment of benefits which that same claimant owes to Iowa Workforce Development so long as both amounts are at least \$50.00. Iowa Code section 96.11(16) allows reimbursement of setoff costs. The claimant currently owes Iowa Workforce Development \$1642.00 in benefits she received in 2005, to which she was not entitled and has an Iowa income tax refund of at least \$50.00. Therefore, Iowa Workforce Development 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 Iowa Workforce Development. Since the only income in 2016 was earned by claimant's spouse, the income tax refund also belongs to him. Thus, Iowa Workforce Development Department is not legally authorized to withhold that Iowa income tax refund since it was not based upon claimant's income either in whole or in part.

DECISION:

The unemployment insurance decision dated February 2, 2017, (reference 08) is reversed. The claimant's appeal is timely. Iowa Workforce Development Department does not have legal authority to withhold the Iowa income tax refund owed to the claimant's spouse to apply to the overpayment of benefits that claimant owes to the Iowa Workforce Development Department.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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