

**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**

**THERESA L ATKINSON  
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**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**Appeal Number: 06A-UI-03655-H2T  
OC: 12-16-01 R: 04  
Claimant: Appellant (2)**

**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, 4th 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

871 IAC 25.16(3) – Request Tax Income Split

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 15, 2006, reference 09, decision that concluded her joint or commonly owned Iowa income tax refund would not be divided proportionately. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on April 19, 2006. The claimant did participate.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has been overpaid unemployment insurance benefits by approximately four thousand dollars. She currently has an outstanding overpayment of unemployment insurance benefits. The claimant has not paid back the overpayment.

On February 1, 2006, the Agency issued a decision that the claimant's overpayment of unemployment insurance benefits would be withheld from her Iowa income tax refund. The claimant was warned in that decision that if she had filed a joint or combined return and wished to have the refund divided proportionately, she must notify the Agency in writing within ten calendar days of the date of the decision. The same day the claimant received the decision notifying her that her tax refund would be withheld, she wrote a letter to the Agency asking that her refund be divided proportionately. She gave the letter to her husband, who works for the United States Post Office and he took it to the post office and deposited it in the mail. The Agency never received the claimant's request to have her refund divided proportionately.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the Department has the authority to recoup the overpayment of unemployment insurance benefits through offset against the claimant's Iowa income tax refund.

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 Department has authority to recoup the overpayment of benefits by offset against the claimant's Iowa state income tax refund. The record does not establish that the claimant has made any effort to repay the overpayment within the last six months. Since a prior overpayment has been established, no legal excuse has been presented that would deprive the Department of recouping her overpayment. The claimant did make a timely request to proportionately divide her Iowa income tax refund between herself and her spouse. It is not the claimant's fault that her request was not received. Thus, the claimant's request to proportionately divide her Iowa income tax refund is granted.

#### DECISION:

The representative's March 15, 2006 decision (reference 09) is reversed. The claimant's refund will be divided proportionately to ensure that her spouse's portion of the refund is not used for the offset.

tkh/kkf