

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ROGER D AUFENKAMP
Claimant

APPEAL NO. 09A-UI-03345-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 06/03/01
Claimant: Appellant (1)**

871 IAC 25.16 - Income Tax Offset

STATEMENT OF THE CASE:

The claimant, Roger Aufenkamp, appealed an unemployment insurance decision dated February 27, 2009, reference 01, that notified the claimant that Iowa Workforce Development was requesting withholding of his Iowa income tax refund to apply to an outstanding overpayment of unemployment insurance benefits. A telephone hearing was held on March 26, 2009. Aufenkamp participated in the hearing.

FINDINGS OF FACT:

Aufenkamp was determined overpaid \$566.00 in unemployment insurance benefits that were paid to him on November 19, 2001, which were for the two weeks ending November 10 and 17, 2001. This was after a final decision of the Employment Appeal Board was issued on November 14, 2001, disqualifying him from benefits and reversing an earlier decision granting him benefits. Under the double-affirmation rule, no overpayment was set up for any payment made to him prior to the reversal of the decision.

Aufenkamp has an outstanding overpayment of unemployment insurance benefits totaling \$449.00. He has not made any attempt to repay the overpayment of benefits within the last six months. He and his wife have a \$295.00 Iowa income tax refund due them based on income earned by his wife in Iowa.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the Agency 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 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).

Based on this rule and the statute cited, the Agency has the authority to recoup the overpayment of benefits by offset against the claimant's Iowa state income tax refund. The outstanding overpayment is more than \$50.00, and no effort has been made to repay the overpayment within the last six months.

During the hearing, Aufenkamp asked about the possibility of having the income tax refund applied to his wife's overpayment instead of his. The law, however, does not have a provision for switching in the manner requested.

Finally, I promised to check into why the double-affirmation rule would not apply to the week ending November 10, 2001. The rule in effect states that no overpayment shall be set up for "any payments made prior the reversal of the decision." 871 IAC 23.43(3)b(3). Since the claimant received the two-week payment on November 19, 2001, which was after the EAB decision was issued, the overpayment amount of \$566.00 was properly calculated.

DECISION:

The unemployment insurance decision dated February 27, 2009, reference 01, is affirmed. The Agency has the authority to recoup the overpayment of benefits by offset against the claimant's Iowa state income tax refund.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs