

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

ZAINAB FARAH
Claimant

APPEAL 22A-UI-09989-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

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

Iowa Code § 96.3(7) – Overpayment
Iowa Code § 96.11(16) – Reimbursement of Setoff Costs
Iowa Code § 8A.504 – Setoff Procedures (IDAS)

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 31, 2022, (reference 05) unemployment insurance decision that determined an outstanding unemployment insurance benefits overpayment would be withheld from claimant's Iowa income tax refund. After due notice was issued, a telephone hearing was held on June 3, 2022. The claimant, Zainab Farah, participated personally. The administrative law judge took official notice of the administrative record. CTS Language Link provided language services for the claimant.

ISSUE:

Can the agency withhold the claimant's state income tax refund to offset an established overpayment of unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an original claim for unemployment insurance benefits with an effective date of April 5, 2020. A decision was issued February 25, 2021, (reference 02), finding claimant was overpaid unemployment insurance benefits in the amount of \$9,000.00. A decision was issued March 31, 2021, (reference 04), that determined claimant was overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$9,600.00.

The overpayments were the result of an administrative law judge decision dated October 14, 2020, that denied benefits effective April 5, 2020. See 20A-UI-10260-CL-T. That decision was appealed to the Employment Appeal Board (EAB) and affirmed. See 20B-UI-10260-EAB. That decision remains in force.

Claimant has a total outstanding overpayment amount of \$18,600.00. Claimant's expected Iowa income tax refund for 2021 is at least \$50.00. She is expecting a refund of approximately \$500.00.

Claimant has filed an application for waiver of the federal portion of the overpayment. As of this date, claimant has not received a determination of the waiver application.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set for the below, the decision dated March 31, 2022 (reference 05) 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 section 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 section 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 r. 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.

Claimant has a total outstanding overpayment amount of \$18,600.00. Of that amount, \$9,000.00 is UI and the remaining portion is FPUC. Claimant's expected Iowa income tax refund for 2021 is at least \$50.00.

The administrative law judge finds the agency does have the authority to withhold the claimant's state income tax refund to offset the established overpayment of UI in the amount of \$9,000.00, based on claimant's expected Iowa income tax refund for 2021 being at least \$50.00, including a \$7.00 transfer fee.

The record indicates IWD has not yet issued a determination on claimant's application for waiver of the FPUC overpayment amount. 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 FPUC overpayment until IWD has issued a determination on claimant's request for waiver of CARES Act overpayments.

DECISION:

The decision dated March 31, 2022 (reference 05) that determined an outstanding unemployment insurance benefits overpayment would be withheld from claimant's Iowa income tax refund is MODIFIED in favor of appellant.

The administrative law judge finds the agency does have the authority to withhold the claimant's state income tax refund, including a \$7.00 transfer fee, to offset the established overpayment of UI in the amount of \$9,000.00.

IWD may not withhold claimant's state income tax refund to offset the FPUC overpayment until IWD has issued a determination on claimant's request for waiver of that overpayment.

REMAND:

This matter is REMANDED for a determination on claimant's application for waiver of the FPUC overpayment amount.



Alexis D. Rowe
Administrative Law Judge

07/29/22
Decision Dated and Mailed

ar/rvs

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 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.