

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GUSTAVO HERRERA
Claimant

APPEAL NO: 12A-UI-02528-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/31/10
Claimant: Appellant (1/R)**

871 IAC 25.16 - Offset of State Income Tax Refund

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 8, 2012 determination (reference 05) informing him that his state income tax refund was going to be withheld to offset a previously established overpayment. The claimant participated in the March 30, 2012 hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds the Department has legal authority to withhold the claimant's portion of the state income refund to offset a previously established overpayment.

ISSUE:

Does the Department have the legal authority to withhold the claimant's state income tax refund to offset a previously established overpayment?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of January 31, 2010. On March 30, 2010 a representative's determination was mailed to the claimant and Highway Farms, Inc. The determination stated the claimant was not qualified to receive benefits as of October 18, 2009, because he had been discharged for disqualifying reasons. The March 30, 2010 determination has not been appealed.

On June 10, 2010, another determination was mailed to the claimant. This determination stated he had been overpaid \$1,690.00 in benefits he had received between January 31 and March 6, 2010. This determination has not been appealed.

The claimant did not know about any overpayment until he received an overpayment statement mailed to him in July 2011. After receiving the overpayment statement, he went to his local Workforce office. Representatives indicated they would try to help him get this matter resolved. The representatives the claimant talked to either transferred or ended their employment with the Department. The claimant did not get his questions answered. He has not made any payment on the overpayment bill he received.

When the claimant received the March 8, 2012 determination, he indicated he had not received the 2010 determinations and did not agree with them.

The claimant and his wife filed joint or a combined state income tax return. The claimant requested that the income tax refund be proportionately divided between the two of them. The last four digits of his wife's, Sandra, social security number is 5387.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 421.17(29) allows one state agency to 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. 871 IAC 25.16 specifically authorizes the Department to withhold the state income tax refund owed to a claimant to apply to an overpayment of benefits which this claimant owes the Department so long as both amounts are at least \$50.

Based on a June 10, 2010 determination, the claimant has been overpaid \$1,690.00 in benefits he received between January 31 and March 6, 2010. The claimant made a timely request to have the tax refund proportionately split.

Based on the above statute and administrative rule, the Department has the authority to recoup the overpayment of benefits by offset against the claimant's Iowa state income tax refund because the outstanding overpayment is more than \$50 and the claimant has made no effort to repay the overpayment within the last six months.

DECISION:

The representative's March 8, 2012 determination (reference 05) is affirmed. Based on 2010 determinations that were not appealed, the claimant has been overpaid \$1,690.00 in benefits. He has not made an attempt to repay any of the overpayment within the last six months. The Department is legally authorized to withhold any of the claimant's Iowa income tax refund, if after the state income tax refund is proportionately split between the claimant and his wife; the claimant has a refund of \$50 or more. This matter is **Remanded** to the Payment Control Section to proportionally split the state income tax refund.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs