

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

ANNETTE D PASS

Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 23A-UI-03657-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/27/22

Claimant: Appellant (1)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 96.11(16) – Tax Refund Offset

STATEMENT OF THE CASE:

On April 7, 2023, claimant Annette D. Pass filed an appeal from the March 30, 2023 (reference 01) decision that allowed claimant's overpayment to be withheld from claimant's Iowa income tax refund. Claimant was properly notified of the hearing. A telephone hearing was held at 10:00 a.m. on Monday, April 24, 2023. Claimant Annette D Pass personally participated. Iowa Workforce Development ("IWD") did not appear for the hearing. IWD submitted documentation for the hearing but the documents were not provided to the claimant so they were not marked and admitted as exhibits offered in lieu of in-person participation. The administrative law judge took official notice of the administrative record to establish that claimant had a claim for benefits in a prior claim year.

ISSUES:

Whether claimant was overpaid benefits.

Whether the agency can 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:

The claimant opened a claim for unemployment insurance benefits with an effective date of November 24, 2019. She initially opened her claim due to a temporary layoff with Whirlpool. Subsequently during her claim year, claimant filed weekly continued claims for benefits at multiple points due to COVID-19-related unemployment. An administrative law judge issued an unemployment insurance decision on January 11, 2021 (reference 01) finding claimant was not eligible for benefits between July 26 and August 10, 2020; and between September 27 and October 17, 2020; because she was on a leave of absence. See 20A-UI-12878-S2-T, *aff'd* 20B-UI-12878. IWD issued two decisions dated February 11, 2021 (reference 04 and reference 05) finding claimant was overpaid \$1,395.00 in regular unemployment benefits and \$600.00 in Lost Wages Assistance Program ("LWAP") benefits as a result of this ineligibility. Claimant appealed the decisions to the Appeals Bureau, and an administrative law judge affirmed the overpayments. See 21A-UI-05801-S2-T and 21A-UI-05803-S2-T. Claimant did not appeal to

the EAB and the decisions have become final agency action. Claimant's current overpayment balance is \$1,262.00.

Claimant opened a claim with an effective date of November 27, 2022, due to a temporary lack of work with Whirlpool. She filed two weekly continued claims for benefits. During the week ending December 3, 2022, claimant reported earning no income and she was entitled to her full benefit amount of \$441.00. IWD withheld her benefits that week to offset against her overpayment from the prior benefit year. During the week ending December 10, 2022, claimant reported earning wages in excess of her weekly benefit amount plus \$15.00, and she was not entitled to receive any benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

Iowa Code § 8A.504(1)(2) provides, in pertinent part, the following setoff procedures:

f. (1) Upon notice of entitlement to a payment, the state agency shall send written notification to that person of the state agency's assertion of its rights to all or a portion of the payment and of the state agency's entitlement to recover the liability through the setoff procedure, the basis of the assertion, the opportunity to request that a jointly or commonly owned right to payment be divided among owners, and the person's opportunity to give written notice of intent to contest the amount of the allegation. The state agency shall send a copy of the notice to the collection entity. A state agency subject to chapter 17A shall give notice, conduct hearings, and allow appeals in conformity with chapter 17A.

Iowa Code § 96.11(16) provides:

16. 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(1-5) provides:

State payment offset. An individual who is owed a payment from the state of at least \$50.00 and owes an overpayment of benefits of at least \$50.00 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.

(1) The individual's name and social security number are given to the department of revenue.

(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.

(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.

(4) Any appeal by the individual is limited to the validity of the department's authority to recoup the overpayment through offset.

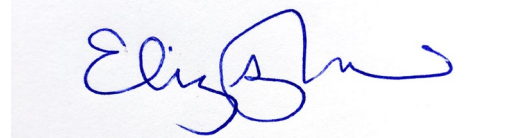
(5) In the event that the amount of the offset exceeds the remaining overpayment, the department shall issue to the individual a special check equal to the amount of the excess.

This rule is intended to implement Iowa Code section 96.11 and 421.17(26,29).

Claimant owes Iowa Workforce Development \$1,262.00 in benefits that claimant received and to which claimant was not entitled. Claimant has an Iowa income tax refund of at least \$50.00. Therefore, Iowa Workforce Development is legally authorized to withhold the Iowa income tax refund up to the amount of the overpayment of benefits, plus a \$7.00 transfer fee.

DECISION:

The March 30, 2023 (reference 01) unemployment insurance decision is affirmed. Iowa Workforce Development has legal authority to withhold claimant's Iowa income tax refund owed to apply to claimant's benefit overpayment.



Elizabeth A. Johnson
Administrative Law Judge

April 26, 2023
Decision Dated and Mailed

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.

partes enumeradas.