

**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**

**TINA C NESTEBY-MURRAY  
105 TAILFEATHER DR NW  
BONDURANT IA 50035**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**PAYMENT CONTROL SECTION  
IOWA WORKFORCE DEVELOPMENT**

**Appeal Number: 05A-UI-03101-DT  
OC: 08/15/99 R: 03  
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, 4<sup>th</sup> 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)

Section 96.3-7 - Recovery of Benefit Overpayment  
871 IAC 25.16 - Offset of State Income Tax Refund

STATEMENT OF THE CASE:

Tina C. Nesteby-Murray (claimant) appealed a March 8, 2005 (reference 02) decision denied her request to have her and her husband's combined income tax refund divided proportionately. A hearing notice was mailed to the claimant's last-known address of record for a telephone hearing to be held on June 3, 2005. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

#### FINDINGS OF FACT:

On February 10, 2005, the Agency issued a decision (reference 01) that concluded that the claimant's 2004 income tax refund would be offset to recover a prior overpayment of unemployment insurance benefits. The decision indicated that if the claimant or her spouse wished, either could request the refund be divided proportionately by making a written request by February 21, 2005. The claimant did not receive this decision. On or about March 4, 2005, the claimant contacted her bank to inquire whether her income tax refund had been received yet. When she learned it had not been received, she wondered if there was an offset hold on the refund, and so contacted the Agency. The person to whom she spoke confirmed that there was an offset hold on the refund, and further gave the claimant the address to which the claimant could send a request to have the refund divided. The claimant immediately composed and sent her request for division of the refund.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant made a timely request to have her income tax fund divided proportionately.

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).

The claimant is to have ten days from the date of mailing the notice of the offset to request division of the refund. Iowa Code section 96.6-2 dealing with timeliness of an appeal from a representative's decision states an appeal must be filed within ten days after notification of that decision was mailed. The Iowa Supreme Court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of the Beardslee court controlling with regarding to the deadline for requesting division of an income tax refund. The notice of offset was considered filed when postmarked. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the claimant was deprived of a reasonable opportunity to request division of the refund in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the claimant did not have a reasonable opportunity to file a timely protest.

The record establishes that the claimant did not receive the notice of offset, and did not learn off the offset and her right to request division until on or about March 4, 2005. The claimant was not responsible for the failure to the notice of offset, but the delay was due to Agency error or misinformation or delay or other action of the United States Postal Service. The claimant did file her request promptly upon learning of the offset and right to request division. The administrative law judge, therefore, concludes that the request was timely filed pursuant to Iowa Code section 96.6-2. This matter is remanded to the Payment Control Section to process the claimant's request.

DECISION:

The representative's March 8, 2005 decision (reference 02) is reversed. The request for proportional division of the income tax refund in this case was timely. The matter is remanded to the Payment Control Section to process the claimant's request.

ld/pjs