

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RANDALL L MERKEL**  
Claimant

**APPEAL NO. 12A-UI-01748-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

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

Section 96.3-7 – Recovery of Overpayment  
871 IAC 25.16 – Income Tax Offset

**STATEMENT OF THE CASE:**

The claimant appealed from a department representative's decision dated February 16, 2012, reference 06, that held his state tax refund is being withheld to repay a benefit overpayment. A telephone hearing was scheduled for March 9, 2012. The claimant did participate.

**ISSUES**

Whether the claimant is overpaid benefits.

Whether claimant's state refund may be offset to repay a benefit overpayment.

**FINDINGS OF FACT:**

The administrative law judge having the witness testimony, and having considered the evidence in the record, finds that: The department record shows the claimant is overpaid benefits \$207.00 on his January 31, 2010 unemployment. Claimant does not dispute the overpayment amount. He believes his refund amount is about \$255.00. The claimant is requesting his refund should be released to him.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.3-7, as amended in 2008, provides:

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.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

871 IAC 25.16(3) 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.

(3) In the case of a joint 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 the split of the refund is not made timely, the entire income tax refund becomes subject to offset.

The administrative law judge concludes that the claimant is overpaid a benefit that is subject to the department state income tax offset procedure to repay it.

The claimant is contesting the circumstances that led to the overpayment that is not a reviewable issue in this matter. He admits the overpayment, and that it is less than his refund. Any remainder will be refunded after collection of the overpayment and transfer fee.

**DECISION:**

The decision of the representative dated February 16, 2012, reference 06, is affirmed. The department is authorized to offset claimant's state tax refund.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/css