

**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**

**MARY E GALE
802 – 4TH ST
UNION IA 50258**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**Appeal Number: 04A-UI-06227-CT
OC: 06/02/02 R: 04
Claimant: Appellant (1)**

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.3(7) – Recovery of Overpayments
Section 871IAC25.16 – Income Tax Offsets
Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

Mary Gale filed an appeal from a representative's decision dated May 11, 2004, reference 01, which advised that her Iowa income tax refund was being withheld to repay an overpayment of job insurance benefits. After due notice was issued, a hearing was held by telephone on July 7, 2004. Ms. Gale participated personally and offered additional testimony from her husband, Ronald Gale.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: On May 11, 2004, Ms. Gale was mailed a notice advising that her Iowa income tax refund was being withheld to repay an overpayment of job insurance benefits. The notice advised that any appeal would have to be filed by May 21, 2004. Ms. Gale did not receive the notice and did not learn of the withholding until she contacted the Department of Revenue and Finance. She filed an appeal on June 3, 2004.

On July 23, 2003, Ms. Gale was mailed a notice that she had been overpaid the net amount of \$681.00 in job insurance benefits. The overpayment was due to underreporting earnings with NCM Limited Partnership. There is no record that Ms. Gale filed any appeal by the August 2, 2003 deadline specified in the overpayment decision.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this matter is whether Ms. Gale filed a timely appeal from the May 11, 2004 decision advising that her income tax refund was being withheld. Inasmuch as she did not receive the decision, she could not have filed an appeal by the May 21, 2004 deadline. Therefore, the appeal filed on June 3, 2004 is considered a timely appeal from the May 11, 2004 decision.

The next issue is whether Iowa Workforce Development may withhold the Iowa income tax refund. Ms. Gale has an outstanding overpayment in excess of \$50.00 and is due an Iowa income tax refund in excess of \$50.00. There have been no payments made against the overpayment. For the above reasons, the administrative law judge concludes that all of the requirements for withholding the tax refund have been satisfied. Therefore, the withholding shall be affirmed.

Ms. Gale contended that she filed an appeal from the July 23, 2003 decision which indicated she had been overpaid. There is no record that any appeal was filed from the overpayment determination. If she had, in fact, filed an appeal by the August 2, 2003 deadline, one would have expected her to have followed-up on the appeal. Because she never questioned why no action was taken on her appeal, the administrative law judge is inclined to conclude that no appeal was filed by August 2, 2003. Therefore, the overpayment decision became a final decision and the administrative law judge is not free to reverse it.

DECISION:

The representative's decision dated May 11, 2004, reference 01, is hereby affirmed. Iowa Workforce Development is authorized to request withholding of Ms. Gale's Iowa income tax refund to repay an overpayment of job insurance benefits.

cfc/s