

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

**DOTTI BURKE**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL NO: 22A-UI-09466-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/05/20**  
**Claimant: Appellant (4R)**

Iowa Code § 96.6(2) - Timeliness of Appeal  
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment  
Iowa Code § 96.11(16) - Reimbursement of setoff costs  
Iowa Code § 8A.504 - Offset of State Income Tax Refund Procedure  
Iowa Admin. Code r. 871-25.16 - State Payment Offset

**STATEMENT OF THE CASE:**

On April 14, 2022, Dotti Burk, claimant/appellant, appealed the May 17, 2022, (reference 08) decision which notified the claimant her Iowa income tax refund was going to be withheld to apply to an overpayment of unemployment insurance benefits which the claimant owed to Iowa Workforce Development. After due notice was issued, a hearing was scheduled to be held by telephone conference call on May 27, 2022, at 3:00PM. Claimant personally participated. The department did not participate. Judicial notice was taken of the administrative record.

**ISSUES:**

Was the claimant overpaid benefits?  
Whether the withholding of the Iowa income tax refund to recover the prior overpayment is valid?  
Was the appeal timely filed?

**FINDINGS OF FACT:**

Having heard the testimony and considered the evidence in the record, the undersigned finds:

Claimant's appeal is dated April 14, 2022. To be timely, the appeal needed to be filed on or before 03/28/22. The decision was mailed to claimant's last known addresses on 03/17/22, which is the same address she currently uses. Claimant did not receive this decision. Claimant learned about the decision on 04/14/22 when she called to follow up on her wavier application and was told of the (reference 08) income tax refund decision. Claimant submitted her appeal the same day.

Claimant acknowledges the decision dated November 4, 2020 (reference 03) disqualifying her from benefits on this claim. She recalls receiving the decision. The disqualification was effective 05/31/20 until she requalified. The decision was not appealed.

There are also decisions that find there have been overpayments of benefits. All of the decisions were dated September 8, 2021, with overpayment amounts as follows: reference (04) \$4,440.89 in regular unemployment benefits; reference (05) \$4,873.00 in PEUC benefits; reference (06) \$4,800.00 in FPUC benefits; and reference (07) \$1,800.00 in LWAP benefits. Claimant cannot remember whether she did or did not receive these decisions. It is noted that the decisions were sent to her childhood home where her father currently resides, but claimant has not resided in approximately 44 years. Claimant acknowledges receiving benefits that she thought were direct deposited but can no longer recall the exact amounts. Claimant does know about the issue of being overpaid as she notified that she owed over \$15,000 and based on that notification, claimant filed a waiver application on March 16, 2022. The total amount Claimant was paid and now owes is \$15,913.89. Claimant did not appeal any of the overpayment decisions.

Claimant's request for a waiver is shown in KLOG as an entry of 03/16/22 that the waiver is under review.

Claimant testified that that she has already received her Iowa income tax refund this year, sometime last week, making it the week of May 16, 2022.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to address is whether the appeal is timely. For the reasons that follow, the administrative law judge concludes the appeal is deemed timely.

Iowa law states an unemployment insurance decision is final unless a party appeals the decision within 10 days after the decision was mailed to the party's last known address. See Iowa Code § 96.6(2).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973).

Claimant did learn about the decision on April 14, 2022. After learning about the decision, she took 0 days to file her appeal, filing it on 04/14/22. Her appeal shall be accepted as timely.

For the reasons that follow the administrative law judge concludes the withholding an amount not to exceed the current balance of benefits owed for the above decisions (references 04, 05, 06, and 07) that are NOT under review for waiver, from claimant's Iowa income tax refund, to recover aforementioned overpayment, is valid under restricted conditions set forth below.

Iowa Code section 96.3(7)(a) 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.

The unemployment handbook states,

**Overpayment**

You are responsible for repaying any benefits that you were not eligible to receive. If you have a non-fraud overpayment, your future benefit payments will be used to offset the amount you owe. **We will intercept state and federal tax returns, casino and lottery winnings, etc... regardless of payment plan or payment history.**

UIPL No. 20-21, pg. 7 states:

As provided in Section 4.d. of UIPL No. 01-16:

States may not initiate recovery of an overpayment until an official determination of the overpayment has been made, consistent with Federal law requirements.

States should have clear written procedures that provide for appropriate factfinding and independent verification of information as needed in the official determination process. State law may prohibit recovery of an overpayment until the overpayment determination, including any appeal, has become final under state law.

In addition, if state law provides for a waiver of recovery of an overpayment, the notice of the overpayment determination must provide enough information to enable the individual to understand under what circumstances a waiver may be granted and how to request such a waiver. (See UIPL No. 23-80.) Until the period for a waiver request has elapsed, or, if an individual applies for a waiver, the waiver determination is made, states may not commence recovery of overpayments. State law may provide that if a request for a waiver is filed the state may not commence recovery of an overpayment until the decision on the waiver request, including any appeal, has become final under state law.

Iowa Code Section 421.17(29) sets forth a procedure whereby one state agency may 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 Iowa Workforce Development Department to withhold the state income tax refund owing to the claimant to apply to an overpayment of benefits that the same claimant owes to the Iowa Workforce Development Department so long as both amounts are at least \$50.00. The claimant owes the Iowa Workforce Development Department for benefits she received to which she was not entitled, as set forth above and she has an Iowa income tax refund. Therefore, the Iowa Workforce Development Department is legally authorized to withhold that Iowa income tax refund up to the amount of the overpayment of benefits that the claimant owes to the Iowa Workforce Development Department.

Claimant owes the Iowa Workforce Development Department for benefits she received to which she was not entitled as set forth in the above findings of facts. She has an Iowa income tax refund that she already received this year. Therefore, the Iowa Workforce Development Department is legally authorized to withhold the Iowa income tax refund for what is currently owed in the references 04, 05, 06, and 07 matters that are NOT under review for waiver. To the extent that any of these benefits are subject to a pending application for waiver, they may NOT be set off by the income tax refund.


To the extent that claimant is correct that she has already received her income tax refund, this entire matter may be moot.

**DECISION:**

The May 17, 2022, (reference 08) decision which notified the claimant her Iowa income tax refund was going to be withheld to apply to an overpayment of unemployment insurance benefits is **MODIFIED** in favor of claimant. The Iowa Workforce Development Department has legal authority to withhold the Iowa income tax refund for benefits under the following restrictions: (1) it can only be for the overpayment balance in decisions reference 04, 05, 06, and 07; and (2) it cannot be for any these benefits that are subject to a waiver application that has not been acted upon.

**REMAND:**

This matter is remanded for a decision with appeal rights on any pending waiver application of claimant.

  
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Darrin T. Hamilton  
Administrative Law Judge

July 26, 2022  
Decision Dated and Mailed

dh/mh

**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  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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](http://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 adquiera 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.