

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIN B HERWEH**  
Claimant

**APPEAL NO. 11A-UI-07268-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 05/06/01**  
**Claimant: Appellant (2/R)**

Section 96.3-7 – Recovery of Benefit Overpayment  
871IAC25.16 – Offset of State Income Tax Refund  
871 IAC 25.16(3) – Request Tax Income Split  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant appealed from the April 27, 2011 (reference 12) that determined her request that the income tax refund be divided proportionately so that only her portion of the refund would be used to offset the overpayment was not timely. After due notice was issued, a hearing was held by telephone conference call on July 7, 2011. The claimant participated personally.

**ISSUE:**

The issue is whether the appeal was filed in a timely manner and whether the withholding of the Iowa income tax refund to recover the prior overpayment is valid.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was notified by a representative's decision that she was overpaid unemployment insurance benefits. The overpayment amount has become final. The state treasurer has notified the Iowa Workforce Development Department that the claimant has an Iowa income tax refund of at least \$50.00.

The claimant requested in writing that her joint or combined income tax refund be divided proportionately between herself and her spouse. The claimant provided her spouse's social security number to the agency.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The 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). The claimant timely appealed the first notice of matter. Therefore, the appeal shall be accepted as timely.

For the reasons that follow the administrative law judge concludes the withholding of the Iowa income tax refund to recover the prior overpayment is valid.

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 Department has the authority to recoup the overpayment of benefits by offset against the claimant's Iowa state income tax refund. Since a prior overpayment has been established, no legal excuse has been presented that would deprive the Department of recouping the overpayment. The claimant has made a timely request to proportionately divide her Iowa income tax refund between her and her spouse. This matter is remanded to the Department to act on the claimant's request to split the refund to ensure that her spouse's portion of the refund is not offset.

**DECISION:**

The representative's April 27, 2011 decision (reference 12) is reversed. The claimant's appeal of the February 11, 2011, decision is considered to be timely. Iowa Workforce Development Department has the authority to recoup the overpayment of benefits by offset against the claimant's Iowa state income tax refund. This matter is remanded to the Department to act on the claimant's request to split the refund to ensure that her spouse's portion of the refund is not offset.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs