

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DOUGLAS J CANNON**  
Claimant

**APPEAL NO: 13A-UI-04397-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 07/03/11  
Claimant: Appellant (4)**

Section 8A.504 – Debt Setoff Procedures  
Section 96.11-16 – Debt Setoff Cost  
871 IAC 25.15 – Income Tax Offset

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated April 5, 2013, reference 08, that held his Iowa income tax refund is being withheld to repay a benefit overpayment. A telephone hearing was held on April 27, 2013. The claimant participated.

**ISSUE:**

The issue is whether claimant's Iowa tax refund can be withheld to repay a UI benefit overpayment.

**FINDINGS OF FACT:**

The administrative law judge having heard the claimant's testimony and having considered the evidence in the record, finds: The department record shows claimant filed a UI claim effective July 3, 2011. Claimant is a stage hand worker that is subject to periods of unemployment and/or under-employment.

The department record shows he received UI benefits totaling \$2,391.00 that occurred during a period from the effective date of claim thru the week ending October 22, 2011. After the department determined he was overpaid those benefits, it sent him a billing notice in April 2012. As of the date of this hearing he has an outstanding UI benefit overpayment in the amount of \$2,391.00.

The claimant filed a joint Iowa tax return with his spouse and he is requesting that her portion of the approximate \$700.00 refund from her earnings should be released to her. He believes he communicated this request to a department representative when he received assistance to file this appeal.

Claimant has been the subject of identity theft and it has affected his federal tax return filing. Claimant is not certain whether this issue is related to this July 2011 UI claim that could have an effect on the overpayment issue in this matter.

## REASONING AND CONCLUSIONS OF LAW:

*Section 96.11-16 Reimbursement of Setoff Costs.* The department shall include in the amount of setoff in accordance with section 8A.504 for collection of an overpayment created pursuant to section 96.3-7 or 96.16-4 an additional amount for the reimbursement of setoff costs incurred by Department of Administrative Services.

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 administrative law judge concludes claimant's request to have the department notify the Iowa Department of Revenue to set-off any portion of the joint tax refund due and owing his spouse, and release it to her, is approved.

The administrative law judge further concludes claimant's portion of the tax refund is subject to debt set-off procedure to apply against the \$2,391.00 overpayment.

The July 2011 overpayment remains an outstanding debt until it is set aside or modified. Claimant did not have evidence to offer at this time that the identity theft that has affected his federal tax return filing is a related issue to this matter. If he does obtain such evidence, then he should take it to the department Investigation & Recovery Unit for immediate action.

**DECISION:**

The department decision dated April 5, 2013, reference 08, is modified. The department should direct Iowa Department of Revenue to proportion the joint tax refund and release that portion to his spouse based on her earnings. The department has the authority to withhold claimant's income tax refund to repay an outstanding UI benefit overpayment.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs