

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUSTIN J GAILEY
Claimant

APPEAL 17A-UI-05725-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 12/14/14
Claimant: Appellant (1)

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Code § 421.17(29) – Offset of State Income Tax Refund
Iowa Admin. Code r. 871-25.16 – Offset of State Income Tax Refund

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 11, 2017, (reference 10) unemployment insurance decision that denied claimant's request to have his joint or combined Iowa income tax refund that is being withheld to apply to an overpayment of unemployment insurance benefits divided proportionately. After due notice was waived, a hearing was held by telephone conference call on June 5, 2017. Claimant participated.

ISSUES:

Did the claimant make a timely request to have his joint or combined Iowa income tax refund divided proportionately?

FINDINGS OF FACT:

Having reviewed the administrative record, the administrative law judge finds: An administrative law judge decision dated February 26, 2015, notified claimant of an overpayment related to his separation from employment with Advance Services Inc. The overpayment amount was \$3,280.00. The claimant appealed the decision, which was affirmed by the Employment Appeal Board and has now become final. Claimant does not contest the validity of the overpayment decision.

The state treasurer notified Iowa Workforce Development that the claimant has an Iowa income tax refund for 2016, of at least \$50.00. An unemployment insurance decision was mailed to the claimant's last known address of record on March 9, 2017, which notified him his 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. The decision also stated that if claimant filed a joint or combined return, he or his spouse could request that the joint or combined income tax refund be divided proportionately. The decision further stated, "You must notify the payment control section, in writing, at PO Box 10332, Des Moines, IA 50306-0332 or by faxing to 515-242-0494, within 10 calendar days of the date of this decision."

Claimant and his wife traveled to Florida on approximately March 12, 2017, and did not return until April 25, 2017. While claimant was gone, he asked the post office to hold his mail. When claimant returned from Florida and reviewed his mail, he received the decision dated March 9, 2017. Claimant contacted the agency immediately and requested that his income tax return be divided proportionately on April 28, 2017.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's request to have his tax refund divided proportionately is timely. The administrative law judge concludes that it is not.

Iowa Code § 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. Iowa Admin. Code r. 871-25.16 specifically authorizes Iowa Workforce Development to withhold the state income tax refund owed to the claimant to apply to an overpayment of benefits which that same claimant owes to Iowa Workforce Development so long as both amounts are at least \$50.00. In this case, claimant does not contest the validity of the overpayment or whether the State has authority to withhold the income tax refund to apply to the overpayment of benefits. The only issue is whether claimant made a timely request to have his income tax refund divided proportionately.

Iowa Admin. Code r. 871-25.16(3) states:

(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 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.

In this case, claimant did not make a timely request to have the income tax refund divided proportionately or show good cause for failing to timely request to have the income tax refund divided proportionately. Therefore, the claimant's request to have the income tax refund divided proportionately must be denied.

DECISION:

The unemployment insurance decision dated May 11, 2017, (reference 10) is affirmed. The claimant's request to have his income tax return divided proportionately is untimely.

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Administrative Law Judge
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Decision Dated and Mailed

cal/scn