

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIKE T TOMLINSON
Claimant

APPEAL NO. 12A-EUCU-00083-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 05/03/09
Claimant: Appellant (1-R)

Section 96.3-7 – Recovery of Overpayments
871 IAC 25.16 – Tax Refund Offset
871 IAC 24.50(7) – Waiver of Overpayments

STATEMENT OF THE CASE:

Mike T. Tomlinson filed a timely appeal from an unemployment insurance decision dated February 16, 2012, reference 03, that advised him the Agency would withhold his 2011 Iowa income tax refund to apply to a prior overpayment of emergency unemployment compensation benefits. After due notice was issued, a telephone hearing was held March 13, 2012, with Mr. Tomlinson participating.

ISSUE:

Can the claimant's income tax refund be used to offset a prior overpayment of benefits?

FINDINGS OF FACT:

On August 16, 2010, administrative law judge decision 10A-EUCU-00068-AT ruled that Mike T. Tomlinson had been overpaid emergency unemployment compensation benefits totaling \$3,216.00. That decision has not been reversed. Mr. Tomlinson has made no payments on the debt. He filed an Iowa income tax return for 2011 and has a refund of \$140.00.

The overpayment occurred because Mr. Tomlinson received emergency unemployment compensation benefits through Iowa at a time he was monetarily eligible for state unemployment insurance benefits through Illinois. Mr. Tomlinson is now employed but was unemployed for a year and a half. His home was foreclosed upon during that time.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.3-7 requires that benefits paid in error by the Agency be repaid, even if the individual who had received the benefits is not at fault for the overpayment. Under some circumstances, the Agency may withhold an individual's Iowa income tax refund or other state payments to recover the benefits paid in error. See 871 IAC 25.16. The administrative law judge concludes that the requirements of the rule have been met in the present case.

In limited circumstances, an overpayment of emergency unemployment compensation benefits may be waived. See 871 IAC 24.50(7). The question of waiver of the overpayment is remanded to the Agency for consideration of whether the overpayment was not the fault of Mr. Tomlinson and whether it would be contrary to equity and good conscience to require the overpayment at this time.

DECISION:

The unemployment insurance decision dated February 16, 2012, reference 03, is affirmed. The Agency may withhold the claimant's 2011 Iowa income tax return to apply to his prior overpayment of benefits. The question of whether the overpayment should be waived is remanded to the Unemployment Insurance Services Division.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw