

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MORGAN A WHALEN**  
Claimant

**APPEAL 22A-UI-05699-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 03/29/20**  
**Claimant: Appellant (2)**

Iowa Code § 96.6(2) – Timeliness of Appeals  
Iowa Code § 421.17(27) – State Income Tax Refund Offset Authority  
Iowa Code § 8A.504 – Setoff Procedures (IDAS)  
Iowa Code § 96.11(16) – Reimbursement of Setoff Costs  
Iowa Admin. Code r. 871-25.16 – State Income Tax Refund Offset  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

Morgan A Whalen (claimant) filed an appeal from the February 10, 2022, reference 05, unemployment insurance decision that gave notice that claimant's 2021, 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 April 14, 2022. The hearing was held jointly with appeal 22A-UI-05701-SN-T, 22A-UI-05702-SN-T, 22A-UI-05708-SN-T, and 22A-UI-05711-SN-T. The claimant participated.

**ISSUES:**

Whether the claimant's appeal is timely? Whether there are reasonable grounds to find her appeal otherwise timely?

Has the claimant been overpaid any unemployment insurance benefits?

Is the withholding of the claimant's state income tax refund to offset a prior overpayment of benefits authorized?

**FINDINGS OF FACT:**

Having reviewed the administrative record, the administrative law judge finds: As described below in the timeliness section of the findings of fact, the claimant was sent a series of overpayment decisions, but she did not receive them in the mail. The combined overpayment amount was \$9,614.00. The claimant did appeal the decision, the administrative law judge affirmed the decision in 22A-UI-05701-SN-T. 22A-UI-05701-SN-T has not yet become final.

The state treasurer has notified Iowa Workforce Development (IWD) that the claimant has an Iowa income tax refund for 2021 of at least \$50.00.

The following section describes the findings of fact necessary to resolve the timeliness issue:

A disqualification decision was mailed to the claimant's address of record, 107 3rd Avenue East in Donahue, Iowa on November 10, 2020 (reference 05). The claimant updated her address to this location on May 13, 2020, ten days after she moved to this address. The claimant did not receive the decision. The claimant received a series of balance statements, labeled internally as Overpayment Statement of Amount Due 65-5314A (05-17), in November and December 2021 stating that she owed money to the agency. These balance statements do not inform parties how to appeal. The claimant did not receive overpayment decision letters dated September 21, 2021 (reference 02, 03, and 04) displaying the rationale for these decisions. The Appeals Bureau could not find Iowa Workforce Development's versions of reference 03 and 04 due to a technological error. The claimant did not receive a decision, dated February 10, 2022, (reference 05), offsetting her existing overpayments with her State of Iowa tax refund.

On March 3, 2022, an Iowa Workforce Development Department representative called the claimant and informed her that she owed money to the State of Iowa. The claimant told the representative that she did not understand because her hours were reduced due to Covid19. The representative informed the claimant that she had been disqualified from regular unemployment. After receiving this news and information regarding how to appeal, the claimant immediately appealed.

#### **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 section 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 issuance of the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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, subsections 10 and 11, 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 issued, 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.

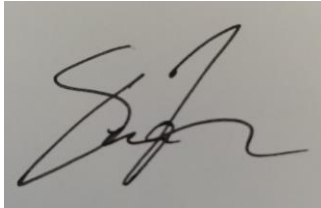
The claimant did not have an opportunity to appeal the fact-finder's decision because she did not receive decisions from the agency informing her of the decision disqualifying her, establishing overpayments, and informing her of that her refund would offset those overpayments. The claimant received a series of balance statements, labeled internally as Overpayment Statement of Amount Due 65-5314A (05-17), in November and December 2021 stating that she owed money to the agency. These balance statements do not inform parties how to appeal. Without instructions of a means of appeal, no meaningful opportunity for appeal exists, especially for someone who is not familiar with the system and in the context of Covid19 unemployment programs. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant appealed on March 3, 2022, the day she was first given the means to appeal and being informed of the decisions made by Iowa Workforce Development.

For the reasons that follow, the administrative law judge concludes the withholding of the Iowa income tax refund to recover the prior overpayment is not valid.

Iowa Code § 421.17(27), via the Iowa Department of Revenue, 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 IWD to withhold the state income tax refund owing to the claimant to apply to an overpayment of benefits which that same claimant owes to IWD so long as both amounts are at least \$50.00. Iowa Code § 96.11(16) allows reimbursement of setoff costs. The claimant owes IWD \$9,614.00 in benefits she received in 2020, to which she was not entitled and she has an Iowa income tax refund of at least \$50.00. If the claimant's appeals were final, then IWD would be legally authorized to withhold that Iowa income tax refund up to the amount of the overpayment of benefits, plus a \$7.00 transfer fee, which the administrative law judge agrees the claimant owes to IWD. However, the claimant through no fault of her own has not yet exhausted her appeals regarding 22A-UI-05701-SN-T, 22A-UI-05702-SN-T, 22A-UI-05708-SN-T, and 22A-UI-05711-SN-T. In that context, the administrative law judge finds Iowa Workforce Development lacks the authority until the claimant has exhausted her appeals or the appeal period on these decisions have run.

**DECISION:**

The unemployment insurance decision dated February 10, 2022, reference 05, is reversed. IWD does not have legal authority to withhold the Iowa income tax refund owed to the claimant to apply to the overpayment of benefits because the claimant's appeals have not yet been exhausted. If the appeal period lapses or the claimant is unsuccessful regarding appealing 22A-UI-05701-SN-T, 22A-UI-05702-SN-T, 22A-UI-05708-SN-T, and 22A-UI-05711-SN-T, then IWD will have legal authority to withhold her tax refund.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

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Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

April 29, 2022  
Decision Dated and Mailed

smn/mh