

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDSEY K GRUVER
Claimant

APPEAL NO. 07A-UI-09533-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 04/23/00 R: 03
Claimant: Appellant (1/R)**

871 IAC 25.16 – State Payment Offset
Section 8A.504 – State Claim Offset
Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Lindsey K. Gruver (claimant) appealed a representative's October 4, 2007 decision (reference 01) that concluded the claimant's prior overpayment of unemployment insurance benefits was being withheld from the claimant's Iowa vendor payment. A hearing notice was mailed to the claimant's last-known address of record for a telephone hearing to be held on October 24, 2007. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Based on a review of the information in the administrative file, the evidence, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Does the Agency have the authority to recover a prior overpayment of unemployment insurance benefits by an offset against a vendor payment otherwise owed by the State to the claimant?

FINDINGS OF FACT:

A representative's decision was issued on May 31, 2000, reference 02, that concluded the claimant was eligible to receive unemployment insurance benefits after a separation from employment from Payless ShoeSource, Inc. (employer). As a result, the claimant was paid unemployment insurance benefits in a gross amount of \$1,690.00. The employer timely appealed the representative's decision, and after due notice an appeal hearing was held before an administrative law judge on July 6, 2000. On July 10, 2000, the administrative law judge issued a decision under appeal number 00A-UI-04584-ET, that reversed the representative's decision and concluded the separation was disqualifying and that the claimant was overpaid \$1,690.00 because of the disqualification. The claimant did not timely appeal that decision and it has become final.

The claimant was put on prior notice of the Agency's authority to withhold an Iowa vendor payment for a prior overpayment. On August 13, 2004 an Agency representative issued a decision which also concluded the claimant's prior overpayment of unemployment insurance benefits was being withheld from a then-pending Iowa vendor payment to the claimant. The claimant did not appeal that representative's decision, and as a result, the amount of \$283.00 from the pending vendor payment was offset against the claimant's unemployment benefit overpayment, reducing the balance of the overpayment to \$1,407.00. The claimant made two \$10.00 payments to reduce the overpayment in December 2004 and in May 2005, respectively. The claimant has made no effort to repay the remaining balance within the last six months. Therefore, the claimant's overpayment balance as of the date of the hearing was \$1,387.00. The claimant's expected Iowa vendor payment is \$736.40.

REASONING AND CONCLUSIONS OF LAW:

The issue in this appeal hearing is whether the Agency has the authority to recover a prior overpayment of unemployment insurance benefits by an Iowa vendor payment offset. The claimant did not timely appeal the July 10, 2000 administrative law judge's decision that caused the overpayment in this case. If the claimant had a dispute with whether or not she should have been disqualified or been found overpaid, then she needed to have filed an appeal from that decision within the appeal period for that decision. The decision causing the disqualification and overpayment has now become final and are not subject to review in this case. Beardslee v. Iowa Department of Job Service, 276 N.W.2d 373 (Iowa 1979).

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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 claimant's overpayment balance exceeds \$50.00, the claimant has made no effort to repay on that balance within the last six months, and the claimant's expected vendor payment exceeds \$50.00. The Agency does have the authority to withhold an Iowa vendor payment to offset a prior overpayment of unemployment insurance benefits. Less the \$7.00 transfer fee, the amount of \$729.40 may be applied against the claimant's unemployment insurance benefit overpayment, reducing her remaining balance to \$657.60.

The claimant's appeal letter expressed a willingness to work out a repayment schedule of the overpayment to avoid this situation at least in the future. The matter is remanded to the Benefit Payment Control Unit to contact the claimant to pursue a repayment arrangement.

DECISION:

The representative's October 4, 2007 decision (reference 01) is affirmed. The claimant's Iowa vendor payment may be withheld to recover the prior overpayment of unemployment insurance benefits. The matter is remanded for action as directed on the repayment schedule issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css