

NEBRASKA ADMINISTRATIVE CODE

TITLE 219 - DEPARTMENT OF LABOR

CHAPTER 10 - WITHHOLDING CURRENT OR FUTURE BENEFITS FOR RECOUPMENT OF NON-WILLFUL BENEFIT OVERPAYMENTS

001. This chapter is adopted pursuant to *Neb. Rev. Stat.* §§48-607 and 48-665.

002. As used in this chapter:

- A. "Recoupment and/or recovery" refers to the application of current or future benefits to a benefit overpayment in order to reduce or clear the amount owed by the claimant.
- B. "Application to Delay Overpayment Recovery" refers only to the form to be completed by the claimant requesting that application of current or future benefits to a benefit overpayment not be made.
- C. "Hearing" refers to a predetermination fact-finding process conducted by an authorized unemployment insurance adjudicator without:
  - (1) administration of oaths, or
  - (2) application of rules of evidence.

003. Whenever a determination or redetermination by the Department results in a benefit overpayment to a claimant, the notice of determination or redetermination shall include the following information:

- A. That the determination or redetermination resulted in an overpayment to the claimant and the amount of that overpayment;
  - B. That the claimant's current or future benefits will be applied to the overpayment unless, within ten days from the date the notice of determination or redetermination was mailed, the claimant contacts the nearest Nebraska Workforce Development Center or the Benefit Payment Control Unit by telephone, in person, or in writing to request delay in recovery of the overpayment from current or future benefits;
  - C. That recoupment may be delayed if
    - (1) the claimant was without fault in the cause of the overpayment, and
    - (2) it would defeat the purpose of the Employment Security Law or would be against equity and good conscience;
  - D. That to request delay in recoupment the claimant must complete and submit an application form provided by the Department and may provide any additional information or evidence that he or she so desires; that such additional information may be provided in person or, in the alternative, by telephone if a personal hearing is not feasible for the claimant due to distance, disability of the claimant, or other good cause, and that such additional information may include statements, either oral or written, of other persons; and
  - E. That an appealable, written determination will be issued.
004. A request for delay in recovery of an overpayment may be made by telephone, in writing, or by personal appearance. Upon such request, that claimant will be provided with the appropriate application form prescribed by the Commissioner. A claimant requesting assistance from the Department in completing his or her form will be provided such assistance. In addition to the application form, the Department will also provide the claimant with an informational sheet which shall provide the following information:
- A. All information as outlined in paragraphs 003(C), (D), and (E) of this chapter;
  - B. The statutory standards for delaying recovery and a brief explanation of the Department's general interpretation of those standards;
  - C. That the Department will begin applying claimant's current or future benefits to the overpayment unless the completed application form has been returned to the Department within seven days from the issuance date of the application form to the claimant;
  - D. That if the claimant desires to present any information orally, he or she may present such information at a hearing before an authorized Unemployment Insurance adjudicator or, in the alternative, by telephone if a personal hearing is not feasible for the claimant due to distance, disability of the claimant, or other good cause. This hearing may be held at a time when the claimant returns the application form or, if requested by the claimant, held at a scheduled time which allows the claimant a reasonable opportunity to prepare for the hearing;
  - E. That the claimant may be represented by counsel and have the right to question any adverse witness present at the hearing;

- F. That a written determination will be issued setting forth the reasons and evidence supporting the determination. Any adverse determination may be appealed to the Nebraska Appeal Tribunal.
  - G. That the filing of the application form for delay of recovery is a separate issue from the filing of an appeal of a determination of overpayment and that an appeal of the overpayment determination must be filed separately; and
  - H. That, pursuant to statute, the Department will not charge interest on the unpaid balance of the overpayment.
005. If the request for delay in recovery of an overpayment, as set forth in paragraph 004 of this chapter, is not made by the claimant within the required time period, the Department may begin withholding current or future benefits for application to the overpayment. The Department will accept such requests filed after the ten-day filing time has passed; however, if recoupment of the overpayment has already begun, recoupment will continue until such time as a determination which allows non-recoupment is issued. Such recoupments applied prior to the determination which allows non-recoupment will be retained by the Department as applied to the overpayment.
- If the completed application to delay overpayment recovery is not submitted within the seven-day time limit, as set forth in 004(C) of this chapter, the Department may begin withholding current or future benefits for application to the overpayment. The Department will accept and determine applications filed after the seven-day filing time has passed. Once a fully completed form, Application to Delay Overpayment Recovery, is received by the Department, no further recoupments will be taken until such time as a determination adverse to the claimant is mailed. If the request to delay overpayment recovery is allowed, it will become effective the date of the determination and any recoupments applied to the overpayment prior to that date will be left as applied to the overpayment.
006. A claimant desiring to present any information orally will be permitted to do so. If possible, the authorized Unemployment Insurance adjudicator conducting the hearing shall be a person who has not had substantial contact with the particular case, but, in any event, the authorized Unemployment Insurance adjudicator shall perform in an impartial manner. A written determination will be made by the authorized Unemployment Insurance adjudicator before whom the recoupment hearing was held and shall set forth the result and the reasons and evidence supporting the result.
007. In the event of a determination adverse to the claimant, the Department will begin withholding for the overpayment no sooner than the date on which the written determination is duly mailed to the claimant unless the Department had already begun withholding due to an untimely action by the claimant.
008. Any benefits applied to the overpayment as a result of untimely request or late return of completed application by the claimant

prior to the mailing of the determination favorable to the claimant, will remain applied to the overpayment.