

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOAN A KOOL
Claimant

APPEAL NO. 15A-UI-07208-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STORY COUNTY
Employer

OC: 05/03/15
Claimant: Appellant (5)

Iowa Code section 96.5(5)(c) - Pension

STATEMENT OF THE CASE:

Joan Kool filed a timely appeal from the June 22, 2015, reference 03, decision that held she was eligible for benefits provided she met all other eligibility requirements, but also held that she was receiving a monthly pension that was deductible from her unemployment insurance benefits effective May 29, 2015. The decision erroneously referred to Ms. Kool's pension as a private or military pension and referenced an erroneous Iowa Code section as the legal authority for the decision. After due notice was issued, a hearing was held on July 29, 2015. Ms. Kool participated. Assistant Story County Attorney Ethan Anderson represented the employer and presented testimony through Assistant Story County Auditor Lisa Markley and Alissa Wignall, Director of Internal Operations. Ms. Kool's Exhibits A and B and Department Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant (DBRO). The administrative law judge took official notice of the Agency's administrative record indicating a zero overpayment balance at this point due to an off-setting of benefits (OVPY and DBRO).

ISSUE:

Whether Ms. Kool is receiving a pension that is deductible from her unemployment insurance benefit and whether Workforce Development correctly deducted the pension from Ms. Kool's benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Joan Kool separated from her employment with Story County effective April 30, 2015. In connection with the employment, Ms. Kool was eligible to participate in the Iowa Public Employees Retirement System (IPERS). During the employment, Ms. Kool and the employer shared in contributing to Ms. Kool's IPERS retirement fund. The contribution was divided 60/40, with the employer making 60 percent of the total contribution and Ms. Kool making 40 percent of the total contribution. Story County is Ms. Kool's sole base period employer for purposes of the unemployment insurance claim that Ms. Kool established effective May 3, 2015.

When Ms. Kool established her claim for benefits, Workforce Development set Ms. Kool's weekly benefit amount at \$404.00. When the benefit amount was set, Workforce Development did so without factoring Ms. Kool's IPERS pension in the weekly unemployment insurance benefit amount. When Ms. Kool reported to the Agency that she was receiving a pension, the Agency solicited information from Ms. Kool regarding the pension. In mid-June 2015, Ms. Kool provided information indicating that on May 29, 2015, she had begun to receiving a \$338.48 monthly pension from IPERS.

A Workforce Development claims deputy used the information provided by Ms. Kool to determine the appropriate deduction to be taken from her weekly unemployment insurance benefit amount based on the IPERS monthly pension. To arrive at a weekly amount to be deducted, the claims deputy multiplied the \$338.48 month pension by 12 to arrive an annual pension amount totaling \$4,061.76. The claims deputy then divided the annual amount by 52 weeks to arrive at \$78.11 total weekly pension amount. Because the base period employer's share of the total pension contribution had been 60 percent of the total contribution, the claims deputy multiplied the \$78.11 total week pension amount by .6 to arrive at the \$46.87 amount (rounded to the nearest full dollar amount, \$47.00) to be deducted from Ms. Kool's \$404.00 weekly benefit amount. The claims deputy concluded that Ms. Kool's weekly unemployment insurance benefit amount should be reduced to \$357.00 in light of the monthly pension.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-5 provides:

An individual shall be disqualified for benefits:

5. Other compensation. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

b. Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

c. A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this paragraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", "b", or "c", were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities

or compensation for accrued leave based on military service, by the beneficiary, with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual, otherwise qualified, from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

Iowa Admin. Code r. 871-24.13(3)e provides:

(3) Fully deductible payments from benefits. The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

e. Pension, retirement, annuity, or any other similar periodic payment made under a plan maintained and contributed to by a base period or chargeable employer. An individual's weekly benefit amount shall only be reduced by that portion of the payment which is the same percentage as the percentage contribution of the base period or chargeable employer to the plan.

The evidence in the record establishes that effective May 29, 2015, Ms. Kool has been receiving a \$338.48 monthly governmental pension that is indeed deductible from her weekly unemployment insurance benefits, pursuant to Iowa Code section 96.5(5)(c). The evidence further indicates that the claims deputy appropriately calculated the proportion of the monthly pension to be deducted from Ms. Kool's weekly unemployment insurance benefit amount, pursuant to Iowa Code section 96.5(5)(c) and Iowa Administrative Code Rule 871-24.13(3)(e). The 60 percent proportion to be deducted equaled the employer's proportion of the contribution to the pension fund. The claims deputy appropriately calculated the dollar amount to be deducted from Ms. Kool's weekly unemployment insurance benefits at \$47.00 and appropriately reduced Ms. Kool's weekly unemployment insurance benefit amount to \$357.00.

DECISION:

The June 22, 2015, reference 03, decision is modified only to indicate that pension in question was a government pension and to correct the legal authority for the decision to indicate Iowa Code section 96.5(5)(c) as the appropriate authority. Effective May 29, 2015, the claimant has received a pension that is deductible from her unemployment insurance benefit. The amount to be deducted is \$47.00. The new weekly benefit amount is \$357.00. The Benefits Bureau has corrected calculated and implemented the pension-based deduction.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/mak