

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY KELLER
Claimant

APPEAL NO. 12O-UI-08145-WT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A J ALLEN MECHANICAL CONTRACTORS
Employer

OC: 1/31/10
Claimant: Respondent (2)

Section 96.5(5)(a)(3) – Pension Deductibility

STATEMENT OF THE CASE:

Employer filed an appeal from a fact-finding decision dated January 17, 2012, reference 05, which held claimant's pension to be nondeductible. After due notice, a telephone conference hearing was scheduled for and held on April 2, 2012. ALJ Seeck issued a decision on April 3, 2012 finding that the employer had not timely appealed. The employer appealed this decision. On July 6, 2012, the Employment Appeal Board reversed and remanded for a new hearing on the basis that the notice of hearing was mailed to an incorrect address. A new hearing was noticed and held on August 20, 2012. Claimant participated personally. Employer participated by Sandy Cosgrove, Accounting Manager. Exhibit A was admitted into evidence.

ISSUE:

The issue in this matter is whether the claimant's pension is deductible under Iowa Code section 96.5(5)(a)(3) (2011).

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was a union plumber who worked through Plumbers and Steamfitters Local Union 33. He worked for the employer from June 2011 to December 14, 2011. He was laid off on December 14, 2011.

Claimant has an original claim date of January 31, 2010. The base period for this claim includes the fourth quarter of 2008 and the first three quarters of 2009. The claimant did not work for the employer during any of those quarters.

REASONING AND CONCLUSIONS OF LAW:

Under Iowa law, an employee who retires and is drawing pension benefits contributed to by a base period or chargeable employer, shall have such payments deducted from unemployment benefits. Iowa Code section 96.5(5)(a)(3) (2011).

In this case, the claimant has an original claim date of January 31, 2010. A J Mechanical was a base period employer in relation to this claim. The pension benefits should have been deductible, however, this case shall not be remanded for consideration of overpayment based upon the application of the double affirmance rule. Iowa Code section 96.6(2) (2011).

"If f an administrative law judge affirms a decision of the representative, ... 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 ..." Iowa Code section 96.6(2) (2011). The claimant was awarded benefits in a fact-finding decision dated January 17, 2012. It was affirmed by ALJ Seeck on April 3, 2012.

DECISION:

The fact-finding decision dated January 17, 2012, reference 05, is reversed. Claimant's pension payments should have been deductible. There is no remand, however, due to the application of the double affirmance rule.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/css