

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LINDA L COLE
Claimant

APPEAL 17A-UI-03773-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

OC: 12/25/16
Claimant: Appellant (1)

Iowa Code § 96.5(5) – Receipt of Pension
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 27, 2017 (reference 05) decision that found she was not eligible for benefits, as she is receiving a pension and her prorated weekly pension is greater than her weekly unemployment insurance benefit amount. After due notice was issued, a hearing was held by telephone conference on May 1, 2017. Claimant Linda L. Cole participated. Claimant's Exhibit A and Department's Exhibits D-1, D-2, and D-3 were received and admitted into the record.

ISSUE:

Is the claimant's pension correctly deducted from benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was separated from employment on December 29, 2016, as the employer eliminated her position. Claimant is eligible to receive a pension. Effective January 1, 2017, the claimant received a gross monthly pension in the amount of \$3119.69 based upon an employer contribution of 100 percent and an employee contribution rate of zero percent. Claimant's weekly benefit amount (WBA) is \$447.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the pension is deducted correctly.

Iowa Code § 96.5(5) provides:

An individual shall be disqualified for benefits:

5. Other compensation.

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

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

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

(3) 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 subparagraph, 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.

b. 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", subparagraph (1), (2), or (3), 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... 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.

Because the employer contribution was 100 percent, that proportion of contribution to the monthly pension, converted to a weekly figure, is \$719.92, and that figure is more than the \$447.00 weekly benefit amount, the pension is correctly deducted.

DECISION:

The March 27, 2017 (reference 05) unemployment insurance decision is affirmed. The pension is deducted correctly.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed