

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS DAVIS
Claimant

APPEAL NO: 11A-UI-01999-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF DES MOINES PAYROLL DEPT B
Employer

OC: 12-19-10
Claimant: Appellant (3)

Iowa Code § 96.5-5 - Receipt of Pension Benefits

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 16, 2011, reference 04, decision which held that his weekly unemployment insurance benefits would be reduced due to the receipt of pension benefits from the City of Des Moines as of December 19, 2010. After due notice was issued, a hearing was held in Des Moines, Iowa, before Administrative Law Judge Julie Elder on March 17, 2011. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the claimant's receipt of pension benefits is deductible from his job insurance benefits and if so, whether it was deducted properly.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits effective January 2, 2011, and was determined to be eligible for a weekly benefit of \$376.00. He applied for IPERS benefits January 5, 2011. The gross amount of his monthly IPERS benefit is approximately \$1,700.00. The claimant received his first IPERS check during the week of January 31, 2011. His base period of the claim consists solely of wage credits earned with the City of Des Moines and the employer is covered by IPERS.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's pension benefits were not properly deducted from his unemployment insurance benefits. When a claimant receives a pension made under a plan maintained or contributed to by a base period or chargeable employer, the pension payment shall be prorated to a weekly amount and must be deducted from a claimant's maximum weekly unemployment insurance benefit amount. Iowa Code § 96.5-5-c.

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.

Rule 871 IAC 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 claimant's pension benefits are deductible from his unemployment insurance benefits as of February 12, 2011. As the employer made 60 percent of the contributions to the pension fund, the claimant's weekly benefits must be reduced by 60 percent.

The claimant's monthly IPERS benefit amount of \$1,700.00 is converted to an annual amount ($\times 12 = \$20,400.00$) and then divided by 52 weeks to determine the weekly IPERS benefit (\$392.31). A total of 60 percent of the claimant's weekly IPERS amount is \$235.39 and this amount is subtracted from the claimant's weekly unemployment benefit amount of \$376.00, which results in a remaining amount of \$141.00.

DECISION:

The February 16, 2011, reference 04, decision is modified in favor of the respondent. The claimant's weekly job insurance benefits shall be reduced effective February 12, 2011, because of his receipt of retirement benefits from a base period employer.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs