

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ILEANA M GONZALEZ
Claimant

APPEAL NO. 11A-UI-09031-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT**

OC: 05/01/11
Claimant: Appellant (1)

Section 96.5-5-c – Pension
871 IAC 24.13(3)e – Fully Deductible Payments

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated July 1, 2011, reference 02, that held her unemployment benefit is reduced by her receiving a pension prorated to a weekly amount effective May 1, 2011. A hearing was held on August 4, 2011. The claimant participated.

ISSUE:

The issue is whether the claimant is receiving a pension that reduces her unemployment benefit.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds that: The claimant retired as a school teacher from the Des Moines Public Schools. While an employee, she and her employer contributed to her IPERS retirement program at the rate of 40% by the claimant, and 60% by the employer.

The claimant filed an unemployment claim effective May 1, 2011, and she provided an IPERS benefit calculation statement to the department that shows she is receiving a monthly pension benefit of \$1,173.07. Her weekly unemployment benefit is \$376.00. A department representative converted the monthly IPERS benefit to a weekly amount of \$270.00 and multiplied 60% times that amount (employer contribution rate) to determine the weekly amount of \$163.00 that should be deducted from claimant's unemployment (\$376.00 – 163.00 = 213.00). The claimant is entitled to a reduced weekly unemployment benefit of \$213 based on the pro-rated (weekly) IPERS pension benefit.

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.

The administrative law judge concludes the claimant is entitled to receive a reduced weekly unemployment benefit of \$213.00 based on a reduction of a pro-rated IPERS pension benefit.

The law requires that a person who is receiving a pension is subject to a reduced unemployment benefit when the employer for whom the employee worked made a contribution to the retirement pension plan. The DSM Public schools contributed 60% of the IPERS benefit, so that percentage is applied to the pro-rated monthly benefit amount to determine the amount of the reduction. The department correctly determined the reduced unemployment benefit amount of \$213.00 based on the IPERS benefit.

DECISION:

The decision of the representative dated July 1, 2011, reference 02, is affirmed. The claimant's unemployment benefit is reduced by the IPERS pension benefit she is receiving.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs