IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ABEL NINO Claimant **ALLSTEEL INC** Employer	**APPEAL NO: 14A-UI-12657-DT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 10/19/14** **Claimant: Appellant (1)**

Section 96.5-5-c – Pension Payment

STATEMENT OF THE CASE:

Nino Abel (claimant) appealed a representative's December 3, 2014 decision (reference 04) that concluded he was not eligible to receive benefits from November 2 through November 22, 2014 because he received a lump sum pension payment from a base-period employer, Allsteel, Inc. (employer). The calculations used by the representative also carried a portion of the lump sum payment allocation to the week ending November 29, 2014. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 7, 2015. This appeal was consolidated for hearing with related Appeal No. 14A-UI-12658-DT and No. 14A-UI-12659-DT. The claimant participated in the hearing. A review of the Appeals Section's conference call system indicates that the employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant receive a pension payment that should be attributed in full or in part to the weeks from November 2 through November 29, 2014?

FINDINGS OF FACT:

When the claimant worked for the employer, the employer matched the claimant's contribution to his 401K account on a dollar for dollar basis. The claimant's last day of work was October 10, 2014. He cashed out his 401K account. The gross amount of the check, issued to him on November 5, was in the amount of $8252.41; after a reduction for a loan against the account taken in a prior year, the net amount of the check prior to tax withholdings was $5448.81.

The claimant established an unemployment insurance benefit year effective October 19, 2014. His average weekly wage for the high quarter of his base period was $820.90. Based on this his weekly benefit amount was determined to be $416.

REASONING AND CONCLUSIONS OF LAW:

The Federal Unemployment Tax Act (FUTA), 26 U.S. C. § 3301 et seq., creates a cooperative federal-state program of unemployment compensation (UC) to unemployed workers. FUTA allows states discretion in setting up their unemployment insurance system but also establishes certain minimum federal standards that a state must satisfy in order for employers in a state to receive credit against their Federal unemployment tax. See 26 U.S.C. § 3304(a).

The standard at issue in this case, § 3304(a)(15), FUTA requires that unemployment compensation payable to an individual be reduced for any week "which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual," provided (a) the payment "is under a plan maintained (or contributed to) by a base period employer or chargeable employer," and (b) "the State law may provide for limitations on the amount of any such a reduction to take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment"

The purpose of § 3304(a)(15) was to address situations in which states were paying unemployment compensation to individuals who had retired from the labor force and were receiving wage-replacement benefits in the form of retirement or pension payments. The federal law, however, requires such reduction only if the retirement payment is made "under a under a plan maintained (or contributed to) by a base period employer or chargeable employer." The purpose of this provision is to prevent a claimant from in effect "double-dipping" by drawing unemployment compensation from an employer at the same time the person is receiving retirement payments that the employer has in whole or in part funded. *Watkins v. Cantrell*, 736 F.2d 933, 937-39 (4th Cir. 1984).

Iowa responded to the provisions of § 3304(a)(15), FUTA by enacting Iowa Code §96.5-5-c, which enacts all of the required and optional clauses of § 3304(a)(15), FUTA. Iowa Code § 96.5-5-c provides that an individual shall be disqualified for benefits for any week with respect to which the individual is receiving or has received payment in the form of any of the following:

> 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. . . . 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.

In interpreting statutes, the words of the statute should be given their plain and generally accepted meaning. Judges should interpret statutes to avoid interpretations that produce strained, unreasonable or absurd results. *Iowa Federation of Labor v. IDJS*, 427 N.W.2d 443, 449 (Iowa 1988). All parts of a statute are to be considered together without giving undue importance to a single or isolated part. The ultimate goal is to ascertain and give effect to the intention of the law making body. The language used in the statute and the purpose for which it was enacted must be examined. *Iowa Beef Processors, Inc. v. Miller*, 312 N.W.2d 530, 532 (Iowa 1981).

Applying these principles to the statute in question, the words of the statute are not clear and unambiguous and it is necessary to interpret what the statute means. First, the statute itself does not appear to apply to lump-sum payments since it refers to retirement pay or "other similar periodic payment." The rule regarding such payments likewise refers to retirement pay or "other similar periodic payment." Rule 871 IAC 24.13(3)e. By definition, a lump-sum payment is a "non-periodic payment." The United State Department of Labor (DOL) has interpreted the federal law as not requiring the deduction of lump-sum pension payments using

this reasoning. Furthermore, DOL has interpreted federal law as not requiring a deduction if a payment (or part of a payment) from a retirement plan is rolled over into an IRA and is a nontaxable event using the reasoning that the payment is not actually received. Unemployment Insurance Program Letter No. 22-87, Change 1, *Whether Unemployment Compensation must be reduced when Amounts are Rolled Over into Eligible Retirement Plans (U.S. Department Of Labor* (DOL), June 19, 1995). Since § 3304(a)(15), FUTA sets minimum requirements, however, states are free to treat a lump sum payment as a "similar periodic payment" and have the option of deducting it in the week it is paid, the week following the claimant's last week of work, or to allocate it over a number of weeks following the last week of work.

There is no provision of Iowa law—either by statute or rule—that explicitly provides for the deduction of a non-periodic lump-sum retirement or pension payment. The Agency has apparently used Rule 871 IAC 24.13(1), which sets forth the procedures for deducting various payments from benefits, as providing the authority for and the formula for deducting lump-sum retirement or pension payment. The Agency took 50 percent of the lump sum ($5448.81) and divided that amount by the claimant's average weekly wage from the highest quarter of earnings in his base period ($820.90) to determine how many weeks the claimant would be ineligible (3.319 weeks), since neither the claimant nor the employer designated the period to which the lump sum payment applied. Since Rule 871 IAC 24.13(1) states that any payments defined under Rule 871 IAC 24.13(3) shall be deducted using the procedures in the rules until the payment is exhausted, the Agency applied that formula to the lump-sum pension. While it would be much preferable if the Agency would adopt a specific rule addressing the lump-sum scenario, I would conclude that in general the Agency employed a reasonable interpretation of the statute and rule to deduct a lump-sum payment.

The facts establish the claimant worked for the employer, who is a base period employer. The employer contributed 50 percent to the claimant's 401K fund. When the claimant withdrew $5448.81, $2724.41 of this must be attributed to the employer. Since the claimant earned the equivalent of $821.00 a week, well in excess of his weekly benefit amount, for each of the weeks ending November 8, November 15, and November 22; he is not eligible to receive benefits for those weeks. The balance, $262 (rounded), is attributable to the benefit week ending November 29 and is deductible from his weekly benefit amount for that week.

DECISION:

The representative's December 3, 2014 (reference 04) decision is affirmed. The lump sum payment the claimant received was from a 401K plan the employer, a base-period employer, contributed to. As a result, $2724.41 of the payment the claimant received must be prorated at the rate of $821.00 a week until exhausted. This means the claimant is not eligible to receive benefits for the weeks ending November 8 through November 22, 2014 because the pension payment prorated to a weekly amount must be attributed to these weeks and exceeds his weekly benefit amount, and that the remainder, $262, be attributed and deducted from the claimant's eligibility for the week ending November 29, 2014.

____
Lynette A. F. Donner
Administrative Law Judge

____
Decision Dated and Mailed

ld/can