

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LONNIE D MCFATE
Claimant

INDUSTRIAL STEEL ERECTORS INC
Employer

APPEAL 18A-UI-06051-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/28/18
Claimant: Appellant (1R)**

Iowa Code § 96.5(5) – Receipt of Pension

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 25, 2018, (reference 02) unemployment insurance decision that deducted pension benefits from the claimant's unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 19, 2018. Claimant participated. Employer participated through Michael Bollaert, Controller.

ISSUE:

Was the pension correctly deducted from the claimant's unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant retired from his last employer. No fact-finding interview or decision has been issued by the unemployment insurance service center regarding the claimant's separation from employment.

The claimant is currently receiving a pension in the gross amount of \$3,000.50 per month. He began receiving his pension in May 2018. The claimant is a member of the iron workers union. The employer's that hire the union members all fund the union's pension. The claimant's most recent employer, who is the only employer in his base period, was one of the companies that funded the pension being received by the claimant. The pension was totally one-hundred percent funded by the employer.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. 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.

Because the employer contribution was 100 percent, the pension was correctly deducted from the claimant's unemployment insurance benefits.

REMAND:

The issue of the claimant's separation from full-time employment is remanded to the UISC for an initial review and determination.

DECISION:

The May 25, 2018, (reference 02), decision is affirmed. The pension was deducted correctly.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs