

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
DIVISION OF ADMINISTRATIVE HEARINGS
Lucas State Office Building
Des Moines, Iowa 50319

Appeal Number: 06-IWDUI-215
OC: 03/05/06
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

DECISION OF THE ADMINISTRATIVE LAW JUDGE

JOHN R PAGE
2006 S THIRD AVENUE PLACE
MARSHALLTOWN IA 50158-5221

STATE CLEARLY

IOWA WORKFORCE DEVELOPMENT
QUALITY CONTROL
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

THEODORE R HOGLAN ATTORNEY
CONDON & HOGLAN
2648 REED AVENUE
MARSHALLTOWN IA 50158

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the Department . If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

DAN ANDERSON, IWD

(Administrative Law Judge)

December 29, 2006

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated November 17, 2006, reference 03, which held that the claimant was receiving monthly pension payments prorated to a weekly amount, which are deductible from his receiving unemployment benefits effective March 5, 2006.

After due notice was issued, a hearing was held by telephone conference call on December 27,

2006. The claimant, and his Attorney, Ted Hoglan, participated. Iowa Workforce Development, Quality Control, participated by Audit Manager, Michelle Andre.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, and having examined all of the evidence in the record, the finds: The claimant filed a claim for unemployment benefits with an effective date of March 5, 2006. The claimant's weekly benefit amount is \$324.00.

Quality Control division of Iowa Workforce Development conducted a random audit review of the claimant's unemployment claim. According to audit procedure, Auditor Putzier reviewed all of the claimant's base period employers that included Land O'Lakes and Agrilance LLC. Putzier contacted employer representatives and the claimant were interviewed about his employment history and retirement pension. Agrilance was part of Land O'Lakes until January 1, 2001 when it separated from that entity, and took control of the trust pension assets, thus becoming the payee for the payment of pension benefits.

The claimant (age 57) was laid-off from his employment at Land O'Lakes on August 4, 2000. The claimant accepted a retirement package from his employer that included a yearly bridge payment (severance) in the amount of \$8,771 that was last paid to him in the first quarter of 2005. The payment was designed to cover the period from the claimant's separation from employment until he became eligible for social security at age 62.

The claimant was awarded a monthly pension benefit of \$775 from Land O'Lakes. The employer paid one hundred percent of the pension contributions. According to department rule, Auditor Putzier determined that the private pension is deductible from the claimant's unemployment benefit, and she prorated it to a weekly amount of \$179. The claimant did not report the monthly pension he received on and after the filing of his unemployment claim in this matter, because he did not believe that he was required to do so.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant received pension pay that is deductible from his receiving unemployment compensation effective March 5, 2006.

Iowa Code Section 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:

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, ... the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment.

871 IAC 24.13(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 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 administrative law judge concludes that the claimant's pension is fully deductible from him receiving unemployment benefits effective March 5, 2006 pursuant to 871 IAC 24.13(3)e, and Iowa Code Section 96.5-5c. It appears that Agrilience LLC became the pension fund administrator for Land O'Lakes after the claimant's retirement in August 2000. During the random audit review, Quality Control learned that the claimant was receiving a private monthly pension from his former employer, and that it contributed 100% of the contributed. The department correctly determined that the pension is fully deductible from the claimant's receipt of unemployment benefits, and that the prorated weekly amount of \$179 should be applied from the effective date of the claimant's claim, March 5, 2006.

The department also correctly determined that the employer bridge payment (severance) of \$8,771 in the first quarter of 2005 made it a base period, chargeable employer for unemployment purposes.

DECISION:

The decision of the representative dated November 17, 2006, reference 03, is **AFFIRMED**. The claimant received a private pension that is fully deductible from his unemployment insurance benefits effective March 5, 2006.

rls