

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LORIN T WEIDLER**  
Claimant

**CITY CARTON COMPANY**  
Employer

**APPEAL NO. 11A-UI-05275-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/31/10**  
**Claimant: Appellant (3-R)**

Section 96.5-5-c – Temporary Disability Pay  
871 IAC 24.13(3)e – Fully Deductible Payments from Benefits/Periodic Employer Payment

**STATEMENT OF THE CASE:**

The claimant appealed a representative's decision dated April 4, 2011, reference 03, that held he was not eligible for benefits the week ending November 27, 2010 due to receiving disability pay. A hearing was held on May 12, 2011. The claimant participated. Jennifer Humphrey, HR director, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

The issue is whether the claimant received deductible short-term disability pay.

**FINDINGS OF FACT:**

The administrative law judge, having heard the witness testimony and having considered the evidence in the record, finds that: The claimant was separated from employment when his FMLA expired about November 2, 2010. An administrative law judge issued a decision dated January 31, 2011 (Appeal No. 10A-UI-17069-DT) that held claimant was eligible for benefits. The decision recognized claimant was receiving some type of disability benefit that was not workers' compensation, but this issue was remanded to Claims to determine whether it should or should not be deductible from claimant's unemployment benefit.

The department issued a decision the claimant received a short-term disability benefit that is deductible from unemployment and the claimant appealed. The employer has a self-funded disability pay program that is 100 percent employer funded. It pays a short-term weekly disability of \$250 up to 26 weeks whether it is based on a work-related or non-work related illness or injury.

The employer determined claimant was eligible for its short term weekly disability for a non-work-related illness beginning about August 14, 2010 and for a 26-week period ending February 12, 2011. The employer paid claimant \$250 for each of the 26 weeks. The fact claimant was on FMLA during the disability pay period had no effect on the payments, as did the employment separation. The employer is claimant's base period employer.

## REASONING AND CONCLUSIONS OF LAW:

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:

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 that the claimant is not eligible to receive benefits from the effective date of his unemployment claim October 31, 2010 through the week ending February 12, 2011, due to receiving employer funded short-term disability pay.

The employer is claimant's base period employer and it wholly funded the short-term disability payment program, which qualifies the payments made to claimant as fully deductible from unemployment benefits pursuant to 871 IAC 24.13(3)e. The administrative law judge was uncertain about this issue when the matter was remanded to the Claims department for a review and decision.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since the claimant has either received benefits or benefits have been offset from the unemployment claim date of October 31, 2010, the overpayment issue is remanded to claims for a decision.

**DECISION:**

The decision of the representative dated April 4, 2011, reference 03, is modified adversely to the claimant. The claimant is not eligible for benefits from the effective date of claim through the week ending February 12, 2011, due to receiving disqualifying short-term disability pay. The overpayment issue is remanded.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw