

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DIANA R GASKELL
Claimant

TENCO INDUSTRIES INC
Employer

APPEAL 17A-UI-12984-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/15/17
Claimant: Appellant (2)

Iowa Code § 96.5(5) – Receipt of Pension

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 19, 2017, (reference 03, amending reference 02 unemployment insurance decision dated November 21, 2017, Appeal 17A-UI-12985-DL-T) unemployment insurance decision that deducted a *weekly* pension amount that exceeds the weekly benefit amount, and denied benefits effective October 28, 2017. The parties were properly notified about the hearing. A telephone hearing was held on January 10, 2018. Claimant participated. Employer participated through human resource director Angela Lenny. Employer witness Marris Whitfield did not participate.

ISSUE:

Is the claimant's pension correctly deducted from benefits?
Is the claimant's pension fund withdrawal deductible from benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was separated from Tenco Industries, Inc., a base-period employer, through September 9, 2017, when she was discharged. She did not retire. Claimant withdrew the *lump sum* vested portion of her 401(k) account in the gross amount of \$2,994.99 on October 27, 2017, to pay bills. The net payment was \$2,245.99. The employer's contribution was three percent. The employer's prorated share of the lump sum pension amount is \$89.85, rounded to \$90.00. Claimant's weekly benefit amount (WBA) is \$267.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the withdrawal is not deductible from benefits.

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits:
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. (Emphasis added.)

Iowa Admin. Code r. 871-24.13(3)e provides:

(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 to 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.

(Emphasis added.)

Because the lump sum payment of funds was not predicated upon the claimant's retirement from employment and is not being made as a "periodic payment" of funds according to the plain language of the statute, and the payment is subject to the applicable early withdrawal income taxes and penalty as would be the case for medical or educational expenses prior to retirement age, the funds are not considered to be in the form of a "periodic payment" of pension or retirement benefits and are not deductible from benefits.

DECISION:

The December 19, 2017, (reference 03) unemployment insurance decision is reversed. The pension is not deducted correctly. The preretirement lump sum pension withdrawal is not deductible from benefits.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs