

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SALLY J JEFFERY
Claimant

APPEAL NO. 10A-UI-16895-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 12/13/09
Claimant: Appellant (4-R)

Section 96.5-5-c - Deduction of Pension Benefits

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 4, 2010, reference 03, that concluded the claimant received a deductible lump-sum pension payment. A telephone hearing was held on January 27, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer. Exhibit A was admitted into evidence at the hearing. The record was left open for the claimant to find out if she made contributions to the pension fund. She reported back that the payment was based 100 percent on employer contributions.

ISSUE:

Did the claimant receive a deductible lump-sum pension payment?

FINDINGS OF FACT:

The claimant worked full-time for the employer from June 2000 to December 11, 2009. The claimant filed a new claim for unemployment insurance benefits with an effective date of December 13, 2009. Her weekly benefit amount was determined to be \$292.00. Her benefits were based on wages from the employer. The claimant's ending hourly rate of pay was \$13.22, or \$528.80 in wages per week. Her average weekly wage based on in her high quarter of earnings was \$516.67.

On September 7, 2010, the claimant received a distribution of her pension benefits in the lump-sum amount of \$17,065.54. The payment is based totally on contribution made by the employer. The claimant reported she had received a pension payment on her claim for the week ending September 11, 2010.

REASONING AND CONCLUSIONS OF LAW:

The Federal Unemployment Tax Act (FUTA), 26 U.S. C. § 3301, 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 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 a claimant 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”

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 lawmaking 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 likewise refers to retirement pay or “other similar periodic payment.” 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. Because § 3304(a)(15), FUTA sets minimum requirements, 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 allocating it over a number of weeks following the last week of work. Unemployment Insurance Program Letter No. 22-87, Change 1 (U.S. Department Of Labor (DOL), June 19, 1995).

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 871 IAC 24.13(1), which sets forth the procedures for deducting various payments from benefits, as providing the authority and the formula for deducting lump-sum retirement or pension payment. That rule establishes a formula of dividing a lump sum by a claimant’s average weekly wage from the highest quarter of earnings in the base period to

determine how many weeks the claimant would be ineligible, if the employer has not designated the period the payment is allocated to and the representative cannot otherwise determine the period. Since 871 IAC 24.13(1) states that any payments defined under rule 871 IAC 24.13(3)—which includes pension payment—shall be deducted using the procedures in the rules until the payment is exhausted, the Agency reasonably interpreted the statute and the rule as applying to lump-sum pension payments.

The Agency, however, mistakenly divides the lump sum using the weekly benefit amount instead of the average weekly wage as the rule provides and disqualified the claimant for 59 weeks. In this case, since claimant's final rate of pay is known, the most reasonable way to determine the period for deducting the payment would be to divide \$17,065.54 by \$528.80, which would be 32.27 weeks. Furthermore, the rule talks about deducting from the effective date of the claim. This makes no sense when the pension is not paid out until nine months after the claimant filed for unemployment benefits, because it would create a huge overpayment. The only sensible way of deducting the payment is from the date that the payment was made.

The claimant received \$423.04 (4 days times \$105 per day) in pension attributable to the week ending September 11, 2010, and would be ineligible for benefits for that week. She would then also be ineligible for benefits for the weeks between September 12, 2010, and April 16, 2011. There would be \$248.54 in pension payment left attributable to the week ending April 23. Her eligibility for benefits for what week would depend on whether she is still unemployed and whether she reports part-time earnings for the week.

The issue of whether the claimant was overpaid benefits is remanded to the Agency. The Agency should also make sure that if the claimant files claims for benefits in April, the proper deductions are taken through the week ending April 23, 2011.

DECISION:

The unemployment insurance decision dated October 4, 2010, reference 03, is modified in favor of the claimant. The claimant is ineligible for benefits for the weeks between September 5, 2010, and April 23, 2011. The remaining \$248.54 in pension payments is attributable to the week ending April 23, 2011. The issue of whether the claimant was overpaid benefits is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw