

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

Appeal Number: 08-IWDUI-057
OC: 09/23/07
Claimant: Appellant (2-R)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

THOMAS C FRITZSCHE
2815 E CENTRAL PARK AVENUE
DAVENPORT IA 52803-2209

IOWA WORKFORCE DEVELOPMENT
INVESTIGATION AND RECOVERY
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209

DAN ANDERSON, IWD

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.

STATE CLEARLY

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.

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.

(Administrative Law Judge)

June 20 , 2008

(Decision Dated & Mailed)

Section 96.6-2 – Timeliness of Appeal/Res Judicata
Section 96.5-5c – Pension/Retirement Pay
871 IAC 24.13(3)e – Fully Deductible Payments from Benefits/Pension or Retirement

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated March 27, 2008, reference 02 that amends reference 01, which held that the claimant was receiving a pension that is deductible from unemployment insurance benefits on a prorated basis effective December 1, 2007.

After due notice was issued, a hearing was held by telephone conference call on June 9, 2008. The claimant participated. Iowa Workforce Development, Investigation and Recovery participated by

Investigator, Cindy Stroud. Department Exhibits One and Two were received as evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses 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 September 23, 2007. The claimant's weekly benefit amount is \$360.00. The claimant reported all of his accrued vacation pay for the week ending September 29, and he received no benefit. Although the claimant requested benefits for the two-weeks ending October 13, the department failed to properly process those claims, and he was paid no benefit.

The claimant last worked for Scott County, Iowa as an assistant county attorney. The claimant is sixty-two years of age, and he became eligible for a normal IPERS retirement benefit based on 26.5 years of covered employment (25years-Scott County; 1.5years –City of Davenport). Scott County is the claimant's last (base period) employer, and the employer makes 60% of the IPERS contribution.

When the claimant claimed for benefits the week ending December 1, he answered yes to the question to receiving a pension, so the department sent him a notice to interview him about this interview on December 19. The department interviewer/representative recorded notes that the claimant received an IPERS monthly pension of \$2,328.19 on November 30, 2007. The representative calculated that the monthly pension should be reduced to a weekly amount of \$322.36 ($\$2,328.19 \times 12\text{mo.} = \$27,938.28$ divided by 52wks. = \$537.27 times 60% base period employer contribution).

The department issued a decision dated December 20, 2007, reference 01 that the claimant was currently receiving a pension that is deductible from unemployment insurance benefits on a prorated weekly basis effective December 1, 2008. The decision provided a warning that it becomes final on December 30 unless an appeal is filed. There was no appeal from this decision by any party.

The department issued a subsequent decision on March 27, 2008, reference 02 that amends 01 (meaning December 20, 2007 decision). During the department review, it noted that no overpayment decision had been issued for the week ending December 8 pursuant to the December decision that caused a review of the entire matter. The department amended the original decision to backdate the prorated pension period to begin November 1 (not December 1) that caused it to issue an overpayment decision dated March 28 for the additional period. Instead of a one-week overpayment of \$360 pursuant to the December 2007 decision, the department determined that the claimant was overpaid benefits \$1,754 pursuant to the amended, March 2008, decision.

During Investigator Stroud's review of this matter, she noted the department erred by conducting a re-open of the claimant's claim in October 2007 rather than a backdating of his claim to weeks he was unemployed. The result caused the claimant to miss two-weeks of unemployment, weeks ending October 6, and October 13, 2007, and benefits of \$360 for each week. Stroud advised that she would pursue a retroactive claim for those benefits upon receiving this decision.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's IPERS retirement should be applied on a prorated basis beginning November 1, 2007, and thereafter, as a deductible payment from unemployment benefits.

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 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 contribution of the individual to the plan under which the payment is made.

Iowa Code Section 96.6-2 provides:

2. Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The administrative law judge concludes that the department decision dated December 20, 2007, reference 01 became final on December 30, as to the application of the claimant's IPERS pension beginning December 1, 2007 pursuant to Iowa Code Section 96.6-2. There is no provision in the Iowa Employment Security that allows the department to correct a final decision by amending it more than three months after it was issued. The claimant accepted the result of the decision, and so must the department who issued it. Since the issue of the March 2008 decision is the same issue of the December 2007 decision, the department is subject to res judicata/issue preclusion in this matter. See City of Des Moines Police Department v. Iowa Civil Rights Commission, 343 N.W. 2d 836 (Iowa 1984).

The department is correct in determining the amount of claimant's weekly prorated IPERS pension (\$322.36), and that it is deductible from the claimant's claim effective December 1, 2007 pursuant to the December 20, 2007, decision.

The administrative law judge further concludes that the department should process the claimant's unemployment claims for the weeks ending October 6, and October 13, 2007, as a request for retroactive benefits in this matter, and this issued is REMANDED to Investigation and Recovery.

DECISION:

The decision of the representative dated March 27, 2008, reference 02 that amends 01, is REVERSED and SET ASIDE. The department decision dated December 20, 2007, reference 01 is final and controlling in this matter. The claimant's weekly prorated IPERS pension is fully deductible from unemployment benefits effective December 1, 2007.

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