

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS C RAHBUSCH
Claimant

APPEAL NO. 11A-UI-03688-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION
Employer

**OC: 01/30/11
Claimant: Appellant (2)**

Iowa Code § 96.5(5)c – Receipt of Pension

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 15, 2011 (reference 01) decision that deducted a lump sum pension payment from benefits. After due notice was issued, a telephone conference hearing was held on April 13, 2011. Claimant participated with his spouse Julie Rahbusch. Employer did not respond to the hearing notice instructions and did not participate.

ISSUE:

The issue is whether the pension amount was correctly deducted.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant is employed at Pella Corporation was temporarily separated from employment on January 10, 2011 when he was placed on a long-term layoff until May 23, 2011. He withdrew \$17,647.06 from his 401(k) fund to apply to taxes, penalty and a down payment for his home purchase.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the pension was not deducted correctly.

Iowa Code § 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.

Because the lump sum payment of funds was not predicated upon the claimant's retirement or separation from employment but for a home down payment, which is a reason other than a "periodic payment" of funds contemplated for retirement living expenses in 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 March 15, 2011 (reference 01), decision is reversed. The lump sum is not deductible from benefits. The benefits withheld shall be paid to claimant, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css