

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN M KERSS

Claimant

APPEAL NO. 09A-UI-15336-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES REGISTER & TRIBUNE

Employer

OC: 08/30/09

Claimant: Appellant (1)

Section 96.5(5)c – Pension Benefits

STATEMENT OF THE CASE:

The claimant, Susan Kerss, filed an appeal from a decision dated October 2, 2009, reference 02. The decision disqualified her from receiving unemployment benefits due to the receipt of pension benefits. After due notice was issued a hearing was held by telephone conference call on November 13, 2009. The claimant participated on her own behalf. The employer, Des Moines Register and Tribune, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

The issue is whether the claimant's pension is deductible from unemployment benefits.

FINDINGS OF FACT:

Susan Kerss was employed by the Des Moines Register from June 15, 1970 until March 8, 2008. She took a "buy out" in which the employer agreed to pay her two weeks of pay for every year she worked, not to exceed 52 weeks.

The buyout payments ended in the first quarter of 2009. She also worked for other employers during this time. In April 2008 she began receiving pension benefits of \$1,917.45 per month or \$442.00 per week. The pension was funded 100 percent by the employer. Ms. Kerss filed a claim for unemployment benefits with an effective date of August 30, 2009. Her weekly benefit amount is \$374.00.

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.

Ms. Kerss is receiving a pension payment which was funded completely by a base period employer. Under the provisions of the above Code section, the entire amount of the pension benefits are deductible from the claimant's unemployment benefits. The pension amount is greater than the unemployment amount and therefore the claimant would be disqualified from receiving unemployment benefits.

DECISION:

The representative's decision of October 2, 2009, reference 02, is affirmed. Susan Kerss is disqualified from receiving unemployment benefits as her prorated weekly pension benefit is greater than her unemployment benefits.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs