

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA G COX
Claimant

APPEAL NO. 09A-UI-17284-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NATIONWIDE MUTUAL INSURANCE CO
Employer

**OC: 08-02-09 R: 02
Claimant: Appellant (2)**

Section 96.5-5 – Receipt of Pension

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 6, 2009, reference 01, decision that deducted pension from benefits. After due notice was issued, a hearing was held by telephone conference call on December 23, 2009. The claimant did participate. No one participated on behalf of the employer.

ISSUE:

Was the lump sum pension the claimant received deducted for the correct period?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated from her employment on October 8, 2008. Effective October 8, 2008, the claimant received a lump sum pension in the amount of twenty-five thousand dollars based upon an employer contribution of 100 percent and an employee contribution rate of 0 percent. Unfortunately the fact-finder believed that the claimant retired from Nationwide on October 8, **2009** when in fact her retirement was in October 8, **2008**. While the fact-finder correctly determined that the twenty-five thousand dollar gross pension amount would be deducted from 22.36 weeks of the claimant's benefits, that time period should have started running in October **2008** not October 2009. After retiring from Nationwide, the claimant has since worked for two other employers and did not file a claim for benefits until August 2, 2009 when she had a separation from a different employer. When the claimant filed her claim for benefits with an effective date of August 2, 2009, the 22.36 weeks of deduction for the lump sum pension payment had already passed. Thus, there should have been no deduction from the claimant's unemployment insurance benefits for the lump sum payment of twenty-five thousand dollars when she filed her claim for benefits effective August 2, 2009. The issue of claimant's ongoing receipt of monthly pension benefits is dealt with in the companion case to this one, appeal number 09A-UI-17286-HT2.

REASONING AND CONCLUSIONS OF LAW:

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

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.

Because the employer contribution was 100 percent, and the pension was paid to the claimant in October 2008 the pension should only have been deducted from the 22.36 weeks following payment to the claimant in October 2008. The issue of the claimant's receipt of ongoing pension benefits is not addressed in this case.

DECISION:

The November 6, 2009, reference 01, decision is reversed. The pension was deducted incorrectly.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs