

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

THOMAS P SCIAMATORE
2315 PERSHING BLVD #2
CLINTON IA 52732

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

Appeal Number: 06A-UI-02565-SWT
OC: 10/02/05 R: 04
Claimant: Appellant (2)

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 Workforce Development. 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)

(Decision Dated & Mailed)

Section 96.5-5-c - Deduction of Pension Benefits

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 28, 2006, reference 01, that concluded he was ineligible to receive unemployment insurance benefits for the weeks between November 13, 2005, to February 25, 2006. A telephone hearing was held on March 27, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Jerry Kedley. Exhibit A was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked for the YMCA from November 1995 to October 2005. While the claimant worked for the employer, both he and the employer paid contributions into the YMCA retirement fund. The claimant had 5 percent of his paycheck contributed to the YMCA retirement fund. The employer made a contribution based on 7 percent of his paycheck to the retirement fund.

These contributions breakdown to 58.3 percent employer contributions and 41.7 percent contributions by the claimant.

Under the terms of the YMCA retirement, the employee contributions and the interest on those contributions are segregated into a "personal account." When an employee has separated from employment, he is permitted to request a refund of his personal account, which results in a lump sum payment to the employee of his own contributions and interest. This in turn reduces the amount of the employee's retirement benefit. Employees are also able to roll over into an IRA or other eligible employer plan, the refund of their personal account to avoid any tax liability that would result from being paid the taxable interest in the account.

On November 2006, the claimant submitted a request for a refund of his personal account, which resulted in a lump sum payment of his own contributions and interest. He received a payment of \$13,265.18, which included his contributions of \$9,625.00 and interest of \$3,755.74. He rolled over the taxable interest into an Individual Retirement Account. The payment did not include any employer contributions.

REASONING AND CONCLUSIONS OF LAW:

The Federal Unemployment Tax Act (FUTA), 26 U.S. C. § 3301 et seq., 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 minimum 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 an individual 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"

The purpose of § 3304(a)(15) was to address situations in which states were paying unemployment compensation to individuals who had retired from the labor force and were receiving wage-replacement benefits in the form of retirement or pension payments. The federal law, however, requires such reduction only if the retirement payment is made "under a plan maintained (or contributed to) by a base period employer or chargeable employer." The purpose of this provision is to prevent a claimant from in effect "double-dipping" by drawing unemployment compensation from an employer at the same time the person is receiving retirement payments that the employer has in whole or in part funded. Watkins v. Cantrell , 736 F.2d 933, 937-39 (4th Cir. 1984).

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 law making 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 regarding such payments 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. Furthermore, DOL has interpreted federal law as not requiring a deduction if a payment (or part of a payment) from a retirement plan is rolled over into an IRA and is a nontaxable event using the reasoning that the payment is not actually received. Unemployment Insurance Program Letter No. 22-87, Change 1, Whether Unemployment Compensation must be Reduced when Amounts are Rolled Over into Eligible Retirement Plans (U.S. Department Of Labor (DOL), June 19, 1995). Since § 3304(a)(15), FUTA sets minimum requirements, however, 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 to allocate it over a number of weeks following the last week of work.

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 for and the formula for deducting lump-sum retirement or pension payment. The Agency took 58 percent of the lump sum and divided that amount by the claimant's average weekly wage from the highest quarter of earnings in his base period to determine how many weeks the claimant would be ineligible. Since 871 IAC 24.13(1) states that any payments defined under rule 871 IAC 24.13(3) shall be deducted using the procedures in the rules until the payment is exhausted, the Agency applied that formula to the lump-sum pension. I would conclude that in general the Agency employed a reasonable interpretation of the statute and rule to deduct a lump-sum payment.

That does not end the matter, however, since the Agency disregarded the fact that part of the payment was rolled over into an Individual Retirement Account and the entire amount was 100 percent derived from the claimant's contributions. Although the Agency deducted the payment based on the percentage of contributions made by the employer to the pension plan, the law envisions that the payment itself being based on both the employer and the claimant's

contributions in that same percentage. It is an unreasonable interpretation of the statute and rule to apply it to a payment that amounts to an employee withdrawing only his own contributions and the interest earned on those contributions. The payment is not deductible for that reason. Should the claimant begin receiving retirement payments from the employer's retirement fund while drawing unemployment insurance benefits, those payments would be based 100 percent on the employer's contributions and deducted accordingly.

DECISION:

The unemployment insurance decision dated February 28, 2006, reference 01, is reversed. The lump-sum retirement payment is not deductible. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/tjc