

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD C URY
Claimant

APPEAL NO. 10A-UI-08440-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/31/10
Claimant: Appellant (1)**

Section 96.5-5-a – Retirement Pension
871 IAC 24.13(4)e – Periodic Pension Benefit

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated June 3, 2010, reference 03, that held he was not eligible for benefits the week ending March 6, 2010 due to receiving a private pension. A hearing was held on August 4, 2010. The claimant participated.

ISSUE:

Whether the claimant's pension is deductible from benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds that: The claimant's job at Nationwide Mutual Insurance/Allied was eliminated, and the employer gave him three options in receiving his pension. The claimant elected to take a monthly pension amount after receiving department information that he believed it would not affect his unemployment benefit.

Initially, the claimant was awarded a monthly pension of \$2,063.00 that was later adjusted to \$2,069.00. The pension became payable in March 2010. The pension is based 100% on the employer contribution. The claimant's weekly unemployment benefit amount is \$388.00. The pro-rated weekly pension amount is \$477.00 that is rounded to the nearest whole dollar. Nationwide is claimant's base period employer.

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.

871 IAC 24.13(3):

Fully deductible payments from benefits. The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

- e. Pension, retirement, annuity or any other similar periodic payment made under a plan maintained and contributed to by a base period or chargeable employer.

The administrative law judge concludes that the claimant's private monthly pension is deductible beginning the week ending March 6, 2010.

The employer-paid pension to the claimant does meet the criteria for deductibility. It is based on a 100% employer contribution. It is a monthly pension. The employer is claimant's base period employer. Since the pro-rated monthly pension that is reduced to a weekly amount is greater than claimant's weekly unemployment benefit, he is not entitled to any benefit.

DECISION:

The decision of the representative dated June 3, 2010, reference 03, is affirmed. The claimant is not eligible for benefits beginning the week ending March 6, 2010, due to receiving a monthly pension.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs