

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROSEALVA L POKETT**  
Claimant

**APPEAL NO. 11A-UI-15726-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MILLARD REFRIGERATED SERVICES INC**  
Employer

**OC: 10/16/11  
Claimant: Appellant (2/R)**

Section 96.5-5 – Receipt of Pension

**STATEMENT OF THE CASE:**

Rosealva Pokett (claimant) appealed a representative's December 2, 2011 decision (reference 01) that deducted pension from benefits after her separation from Millard Refrigerated Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 10, 2012. The claimant was represented by Ed Keane, attorney at law, and participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate in the hearing.

**ISSUE:**

The issue is whether the pension was properly deducted from the claimant's unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was separated on or about October 14, 2011, due to a work-related injury. She received workers' compensation benefits related to the injury from October 14, 2011, to the present. The claimant does not receive any pension payments.

**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.

The claimant does not receive any pension payments. No pension payments should be deducted from the claimant's unemployment insurance benefits.

The issue of the receipt of workers' compensation payments is remanded for determination.

**DECISION:**

The representative's December 2, 2011 decision (reference 01) is reversed. The pension was not deducted correctly. The issue of the receipt of workers' compensation payments is remanded for determination.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw