

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CAROLYN M DREXLER**  
Claimant

**APPEAL NO. 10A-UI-08369-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIDLAND FORGE**  
Employer

**OC: 01/17/10**  
**Claimant: Appellant (3-R)**

Iowa Code section 96.5(5) – Deduction of Pension Benefits  
Iowa Code section 96.5(5) – Deduction of Worker’s Compensation Benefits

**STATEMENT OF THE CASE:**

Carolyn Drexler filed a timely appeal from the June 8, 2010, reference 01, decision that concluded she was receiving worker’s compensation benefits that would be deductible from her unemployment insurance benefits. After due notice was issued, a hearing was held on July 28, 2010. Ms. Drexler participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The claimant waived formal notice on the issue of whether she had received pension benefits that were deductible from her unemployment insurance benefits. The administrative law judge took official notice of the Agency’s administrative record of benefits disbursed to the claimant and took official notice of the administrative file documents the claimant had submitted concerning her receipt of pension benefits.

**ISSUES:**

Whether Ms. Drexler has received pension benefits that are deductible from her weekly unemployment insurance benefits. She has.

Whether Ms. Drexler has received worker’s compensation benefits for temporary disability that are deductible from her weekly unemployment insurance benefits. She has not.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Carolyn Drexler established a claim for unemployment insurance benefits that was effective January 17, 2010 and was deemed eligible for benefits. Workforce Development calculated Ms. Drexler’s weekly unemployment insurance benefit amount at \$374.00 per week. Ms. Drexler received this amount in weekly benefits for the 19-week period of January 17, 2010 through the benefit week that ended May 29, 2010. Effective May 30, 2010, Workforce Development reduced the amount of weekly benefits disbursed to Ms. Drexler to \$223.00 after receiving information about the pension Ms. Drexler was receiving. Ms. Drexler received this amount in weekly benefits for the five-week period of May 30, 2010 through July 3, 2010, when she discontinued her claim.

Ms. Drexler commenced receiving a \$650.00 monthly pension in November 2009 and continues to receive the monthly pension at this time. The pension is based on Ms. Drexler's long-term employment with employer Midland Forge. Midland Forge was Ms. Drexler's only base period employer. The pension was fully funded by Midland Forge.

Ms. Drexler has not received any worker's compensation benefits for *temporary* disability since she established her claim for benefits.

#### **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)(e) provides as follows:

*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. An individual's weekly benefit amount shall only be reduced by that portion of the payment which is the same percentage as the percentage contribution of the base period or chargeable employer to the plan.

The weight of the evidence indicates that Ms. Drexler has been receiving a monthly pension since she established her claim for unemployment insurance benefits. The pension is paid pursuant to a plan maintained by the Midland Forge and Midland Forge was the only party that contributed to the pension plan. The pension benefit is fully deductible from Ms. Drexler's weekly unemployment insurance benefit amount on a dollar-per-dollar basis. The monthly amount of the pension is \$650.60. The value of the pension annually is \$7,807.20. That amount divided by 52 weeks is \$150.14. The amount that should be deducted from Ms. Drexler's weekly unemployment insurance benefits \$150.00. The \$374.00 unemployment insurance benefit amount minus the \$150.00 weekly pension amount equals \$224.00, not the \$223.00 amount the Agency used for the five-week period of May 30, 2010 through July 3, 2010.

The weight of the evidence indicates that Ms. Drexler has not received any worker's compensation benefits for *temporary* disability since she established her claim for unemployment insurance benefits. Any worker's compensation benefits Ms. Drexler may receive for *permanent* disability would not be deductible from her unemployment insurance benefits. Accordingly, there are no worker's compensation benefits to deduct from Ms. Drexler's unemployment insurance benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits,

as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The weight of the evidence indicates that there has been an overpayment of benefits for the 19-week period of January 17, 2010 through the benefit week that ended May 29, 2010. The weekly overpayment amount was \$150.00 and the total overpayment amount was \$2,850.00. Because overpayment of benefits was not an issue set for hearing, this matter will be remanded to the Claims Division for entry of an overpayment decision.

**DECISION:**

The Agency representative's June 8, 2010, reference 01, is modified as follows. The claimant is eligible for benefits, provided she is otherwise eligible. Effective January 17, 2010, the claimant has received \$150.00 in weekly pension benefits that are fully deductible from her weekly unemployment insurance benefits. The claimant has not received worker's compensation benefits for temporary disability since she established her claim. The claimant's weekly benefit amount, after the pension is deducted, would be \$224.00.

The matter is remanded to the Claims Division for entry of an overpayment decision regarding the above-referenced overpayment of benefits for the 19-week period of January 17, 2010 through the benefit week that ended May 29, 2010.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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