

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANK G STASTNY

Claimant

APPEAL NO. 09A-UI-06236-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KLEIMAN CONSTRUCTION INC

Employer

Original Claim: 02/17/08

Claimant: Appellant (2)

Iowa Code section 96.6(2) – Final Agency Decision and Issue Preclusion

Iowa Code section 96.5(5)(c) – Pension Benefits

STATEMENT OF THE CASE:

Frank Stastny filed a timely appeal from the April 14, 2009, reference 04 decision that denied benefits effective the week ending March 1, 2008. The decision also concluded Mr. Stastny was receiving pension benefits that exceeded his weekly benefit amount and were deductible from his unemployment insurance benefit eligibility. A hearing was scheduled for May 15, 2009 and the parties were properly notified. The claimant and Cynthia Ferring, Office Manager, were both available for a hearing. Prior to the hearing, the administrative law judge reviewed the Agency's administrative file and concluded that a hearing was not necessary or appropriate. Based on the contents of the Agency's administrative file and the applicable law, the administrative law judge entered the following findings of fact, conclusion, and decision.

ISSUE:

Whether the issue of the deductibility of the claimant's pension benefits has already been adjudicated to a final agency decision that binds the parties.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Frank Stastny established a claim for benefits in a prior claim year. The claim was effective February 17, 2008. On March 6, 2008, a Workforce Development representative entered a reference 01 decision that allowed benefits and that concluded Mr. Stastny's pension benefits were not deductible from his unemployment insurance benefits. The employer became aware of the decision allowing benefits by virtue of the quarterly statement of charges it received on May 12, 2008. The employer filed an untimely appeal after it received a second quarterly statement of charges on August 11, 2008. See 08O-UI-09101-MT. The employer's untimely appeal and the pension pay issue were adjudicated by means of the administrative law judge decision entered on October 22, 2008. See Appeal Number 08O-UI-09101-MT. The administrative law judge decision specifically references the pension pay issue at the beginning of the decision as the substantive legal issue at the heart of the untimely appeal. See Appeal Number 08O-UI-09101-MT. The employer did not appeal the administrative law judge's decision and the decision became a final agency decision.

Mr. Stastny established a new claim for benefits that was effective February 15, 2009. The employer filed a timely protest of new claim. On March 17, 2009, a Workforce Development representative in the Claims Division conducted a fact-finding interview. The Workforce Development representative took statements from both parties regarding the claimant's separation from the employment and the pension pay issue. The Workforce Development then entered the April 15, 2009, reference 04, decision denying benefits effective February 15, 2009 and deducting pension pay from Mr. Stastny's benefits. The decision was based on the February 15, 2009 original claim date.

In connection with the March 17, 2009 fact-finding interview, the Workforce Development representative also entered an April 14, 2009, reference 04, decision based on the February 17, 2008 original claim date. That decision denied benefits effective the week ending March 1, 2008. That decision also addressed the pension pay issue and concluded the pension pay was deductible from the claimant's unemployment insurance benefits.

These two disqualification decisions prompted two overpayment decisions, both based on the February 17, 2008 original claim date. The April 15, 2009, reference 05, decision said that Mr. Stastny was overpaid \$770.00 for two weeks between March 22, 2009 and April 4, 2009. The April 14, 2009, reference 06, decision said that Mr. Stastny was overpaid \$3,478.64 in emergency unemployment compensation benefits (EUCU) for the nine-week period ending March 21, 2009.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6 provides the means by which a party to a proceeding under the Iowa Employment Security Act may appeal from a decision. If no appeal is taken, the decision of the Agency representative becomes a final agency decision.

The employer did not appeal from the administrative law judge decision entered on October 22, 2008 in Appeal Number 08O-UI-09101-MT. That decision addressed both the timelines of the employer's appeal from the March 6, 2008, reference 01, decision and the issue of whether pension pay benefits were deductible from Mr. Stastny's unemployment insurance benefits. The decision in Appeal Number 08O-UI-09101-MT concluded the employer had filed an untimely appeal from the March 6, 2008, reference 01, decision and, therefore, that the employer could not be heard further on the pension pay issue. The administrative law judge decision entered on October 22, 2008 in Appeal Number 08O-UI-09101-MT became a final agency decision.

A finding of fact or law, judgment, conclusion, or final order made pursuant to Iowa Code section 96.6 by an employee or representative of the department, administrative law judge, or the employment appeal board, is binding upon the parties to proceedings brought under the Iowa Employment Security Law. Iowa Code section 96.6(4).

The Claims Division representative lacked legal jurisdiction to conduct further proceedings on the pension pay issue. The parties are bound by the final agency decision entered on October 22, 2008 in Appeal Number 08O-UI-09101-MT. The parties are precluded from relitigating the pension pay issue. The April 15, 2009, reference 04, decision regarding deductibility of pension pay (original claim date February 15, 2009) was entered in error and is reversed. The April 14, 2009, reference 04, decision regarding deductibility of pension pay (original claim date February 17, 2008) was entered in error and is reversed. Likewise, the additional overpayment decisions that flowed from the Claims Division representative's

erroneous relitigation of the pension pay issue are reversed. These include the April 15, 2009, reference 05, overpayment decision (original claim date February 17, 2008), and the April 14, 2009, reference 06, overpayment decision (original claim date February 17, 2008).

DECISION:

The Agency representative's April 14, 2009, reference 04, is reversed. The parties were and are precluded from re-litigating the pension pay issue based on a prior final agency decision. The claimant's pension pay is not deductible from the claimant's unemployment insurance benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw