

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES J TONEY
Claimant

KLEIMAN CONSTRUCTION INC
Employer

APPEAL 19A-UI-01048-DB-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 12/30/18
Claimant: Respondent (1)

Iowa Code § 96.5(5) – Deductions from Benefits
Iowa Admin. Code r. 871-24.13 – Deductible Payments from Benefits

STATEMENT OF THE CASE:

The employer/appellant filed a timely appeal from the January 29, 2019 (reference 02) unemployment insurance decision that found claimant's pension was not deductible from his unemployment insurance benefit payments because this employer was not a base period or chargeable employer. After due notice was issued, a hearing was held by telephone conference on February 20, 2019. Claimant participated personally. The employer participated through witness Cynthia Ferring. Claimant's Exhibit A was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records, including the fact-finding documents.

ISSUE:

Is claimant's pension deductible from unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant filed an initial claim for unemployment insurance benefits effective December 30, 2018. His weekly benefit amount is \$467.00.

The claimant was employed by Kleiman Construction Inc. ("Kleiman") as a full-time union laborer until he was permanently laid off on April 6, 2018. He began working full-time at L L Pelling Company Inc., then became temporarily laid off due to lack of work in December of 2018. Claimant's administrative records establish that he earned at least ten times his weekly-benefit amount since he refused work with Kleiman and a decision dated January 15, 2019 (reference 01) found that the employer would not be charged for benefits paid.

Claimant receives a pension from the Union Laborers Pension Fund of \$2,400.00 per month. He became eligible for the pension on May 1, 2018. Claimant contributed 100% to this union pension through payment to the union of a portion of his hourly wage rate. See Exhibit A. The union determined the amount of the hourly rate of pay that would be paid towards the pension, not the employer. The employer did not make any separate contributions to the pension fund.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.5(5) provides:

Causes for disqualification. An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

5. Other compensation.

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) 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, this subparagraph shall only be applicable if the base period employer has made one hundred percent of the contributions to the plan.**

b. 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", subparagraph (1), (2), or (3), 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.

(emphasis added).

Iowa Administrative Code r 871-24.13(3) provides:

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:

- a. Wage interruption insurance payment. Any insurance payment received or due from wage interruption insurance because of fire, disaster, etc.
- b. Excused personal leave. Excused personal leave, also referred to as casual pay or random pay, is personal leave with pay granted to an employee for absence from the job because of personal reasons. It shall be treated as vacation and be fully deductible in the manner prescribed in rule 871—24.16(96).
- c. Wages in lieu of notice, separation allowance, severance pay and dismissal pay.
- d. Workers' compensation, temporary disability only. The payment shall be fully deductible with respect to the week in which the individual is entitled to the workers' compensation for temporary disability, and not to the week in which such payment is paid.
- 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.

(emphasis added).

Because claimant contributed 100% of the payments to the pension through his negotiated hourly rate of pay, the pension payments he is now earning are not deductible from his unemployment insurance benefits. Simply because the employer physically made deductions to the claimant's paycheck and transferred claimant's payments to the pension on behalf of the claimant does not mean the employer "made contributions" to the plan pursuant to Iowa Code § 96.5(5).

DECISION:

The January 29, 2019 (reference 02) decision is affirmed. The claimant is eligible for benefits, provided he meets all other eligibility requirements, and there is no reduction in benefits imposed due to his pension.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs