

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
JANIS L ROE Claimant	APPEAL NO. 10A-UI-07102-JTT
KENCO LOGISTIC SERVICES LLC Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 07/12/09 Claimant: Respondent (5)

Iowa Code Section 96.5(5) - Deduction of Retirement Benefits from Weekly Benefit Amount

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 29, 2010, reference 01, decision that allowed benefits without a pension deduction. After due notice was issued, a hearing was held on June 30, 2010. Claimant Janis Roe participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant, wages reported by or for the claimant, and base period employers. Exhibits A and B were received into evidence.

ISSUE:

Whether the claimant is receiving a deductible 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.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Janis Roe was employed by Kenco Logistics Services, L.L.C., as a full-time receiving clerk from 2004 until March 25, 2010, when the employer laid her off. The employer received and stored parts for Electrolux. Ms. Roe's layoff occurred when Electrolux no longer needed Kenco's services because Electrolux was relocating to Mexico. During her employment, Ms. Roe participated in the employer's retirement benefit program. Ms. Roe and the employer both contributed to an individual retirement account (IRA). Ms. Roe does not know the specific contribution she or the employer made to the IRA. In connection with Ms. Roe's separation from the employment, Ms. Roe made a lump sum transfer or rollover of the IRA funds from one bank/investment company to another. Ms. Roe is not drawing an annuity or any other periodic payment from the fund. Ms. Roe receives widow benefits through the Social Security Administration, but receives no other periodic pension or annuity. Kenco is providing no other type of periodic payment to Ms. Roe.

REASONING AND CONCLUSIONS OF LAW:

The Federal Unemployment Tax Act (FUTA), 26 U.S. C. § 3301 et seq., creates a cooperative federal-state program of unemployment compensation (UC) to unemployed workers. FUTA allows states discretion in setting up their unemployment insurance system but also establishes certain minimum federal standards that a state must satisfy in order for employers in a state to receive credit against their Federal unemployment tax. See 26 U.S.C. § 3304(a).

At Section 3304(a)(15), FUTA requires that unemployment compensation payable to an individual be reduced for any week "which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual," provided (a) the payment "is under a plan maintained (or contributed to) by a base period employer or chargeable employer," and (b) "the State law may provide for limitations on the amount of any such a reduction to take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment"

The purpose of § 3304(a)(15) was to address situations in which states were paying unemployment compensation to individuals who had retired from the labor force and were receiving wage-replacement benefits in the form of retirement or pension payments. The federal law, however, requires such reduction only if the retirement payment is made "under a under a plan maintained (or contributed to) by a base period employer or chargeable employer." The purpose of this provision is to prevent a claimant from in effect "double-dipping" by drawing unemployment compensation from an employer at the same time the person is receiving retirement payments that the employer has in whole or in part funded. Watkins v. Cantrell , 736 F.2d 933, 937-39 (4th Cir. 1984).

Iowa responded to the provisions of § 3304(a)(15) by enacting Iowa Code section 96.5(5)(c), which enacts all of the required and optional clauses of § 3304(a)(15), FUTA. Iowa Code section 96.5(5)(c) has been renumbered so that it now appears as Iowa Code section 96.5(5)(a)(3) as follows:

96.5 Causes for disqualification.

An individual shall be disqualified for benefits:

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:

(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, if an individual's benefits are reduced due to the receipt of a payment under this subparagraph, 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.

The weight of the evidence in the record establishes that Ms. Roe's rollover of the total amount in her IRA from one servicing agency to another is not the type of periodic pension or annuity payment the statute is intended to address. In addition, Ms. Roe is not drawing an annuity from the IRA. While Ms. Roe has been claiming unemployment insurance benefits, she is not receiving and has not received a pension, retirement or retired pay, annuity, or any other similar

period payment made under a plan maintained or contributed to by the employer and therefore is not subject to having unemployment insurance benefits reduced.

DECISION:

The claims representative's April 29, 2010, reference 01, decision is modified as follows. the claimant is not receiving a 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 that would be deductible from unemployment insurance benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs