

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY FRICK
Claimant

APPEAL NO: 07A-UI-00523-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 12/24/06 R: 04
Claimant: Appellant (1)

Section 96.5-5 –Receipt of Pension

STATEMENT OF THE CASE:

Lawrence Frick (claimant) appealed an unemployment insurance decision dated January 4, 2007, reference 01, which held that he was not eligible for unemployment insurance benefits due to the receipt of a private pension. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 31, 2007. The claimant participated in the hearing. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's receipt of pension benefits effectively disqualifies him from receiving unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant retired from Portzen Construction who paid into a pension fund for the claimant. He did not contribute to the pension fund as it was funded 100 percent by the employer. The claimant now receives \$2,380.00 per month from his pension and this averages out to approximately \$550.00 per week. His unemployment insurance benefits weekly benefit amount is \$334.00.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant's pension benefits were properly deducted from his unemployment insurance benefits. When a claimant receives a pension made under a plan maintained or contributed to by a base period or chargeable employer, the pension payment shall be prorated to a weekly amount and must be deducted from a claimant's maximum weekly unemployment insurance benefit amount. Iowa Code section 96.5-5-c.

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 paragraphs "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.

871 IAC 24.13(3)e provides:

(3) 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 facts establish the claimant worked for an employer that is a base period employer who contributed 100 percent to the claimant's pension. As a result, the claimant's weekly pension entitlement of \$549.23 must be deducted from his maximum weekly benefit amount of \$334.00. Consequently, the claimant is not entitled to unemployment insurance benefits so long as he receives his pension.

DECISION:

The unemployment insurance decision dated January 4, 2007, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he receives pension benefits, based exclusively on contributions from his base period employer, in excess of his weekly unemployment insurance benefit amount.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs