

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES D WHITE
Claimant

APPEAL NO: 07A-UI-02632-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 09/10/06 R: 01
Claimant: Appellant (1)**

Iowa Code § 96.5(5) – Receipt of Pension

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 9, 2007, reference 05, decision that deducted pension from benefits. After due notice was issued, a hearing was held by telephone conference on April 3, 2007. Claimant did participate.

ISSUE:

The issue is whether claimant's pension was correctly deducted from benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant became eligible for his pension from IAMO Telephone Company of Coin, Iowa (IAMO) for approximately five years' work and Farmer's Telephone Company of Essex, Iowa (Farmer's) for approximately 28 years of service on September 15, 2006. A lump sum was paid on December 15, 2006 dating back to September 15, 2006 and for each month, the claimant received a net (gross figures are not available) monthly pension in the amount of \$2,041.27 based upon an employer contribution of 100 percent for Farmer's, which was the bulk of the pension fund. IAMO contributed double the amount that claimant put toward his pension fund. As of January 14, 2007 when claimant turned age 60 he began receiving an Iowa National Guard pension of an additional \$741.00 net per month. His weekly benefit amount (WBA) is \$334.00 or \$1,447.00 per month.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the pension was deducted correctly.

Iowa Code § 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.

Because the bulk of the employer contribution pension was 100 percent, and the amount, deducted from benefits would render claimant ineligible for both the pension and unemployment insurance benefits, the pension was correctly deducted. Benefits must be denied based upon ineligibility.

DECISION:

The March 9, 2007, reference 05, decision is affirmed. The pension was deducted correctly and that deduction renders claimant ineligible for even partial unemployment insurance benefits.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs