

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**BETH A SCHWENNEN
255 MAIN ST W
INDEPENDENCE IA 50644-9138**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**Appeal Number: 06A-UI-06422-SWT
OC: 03/12/06 R: 03
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-5-c - Deduction of Pension Benefits

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 20, 2006, reference 02, that concluded she had received a lump sum pension payment that caused her to be ineligible for benefits for the weeks between May 7 and July 29, 2006. A telephone hearing was held on July 12, 2006. The claimant participated in the hearing.

FINDINGS OF FACT:

The claimant worked for Tyson Fresh Meats from September 5, 1995, to March 17, 2006, when the plant closed. The claimant filed a new claim for unemployment insurance benefits with an effective date of March 12, 2006. The claimant's weekly benefit amount was determined to be \$252.00 based on the wages paid by Tyson. The claimant's average weekly wage based on the highest quarter of wages in her base period was \$446.99.

On May 4, 2006, the claimant received a lump sum distribution from her 401(K) retirement account. The gross amount of the distribution was \$9,398.59, with \$5,175.22 attributable to the money that that employer had contributed to the 401(K). The claimant only received cash totaling \$2,572.28 because of tax deductions and deductions to repay loans she had taken against her 401(K) totaling \$4,476.59.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant received a deductible pension payment and, if so, whether the payment was properly deducted.

Iowa Code § 96.5-5-c provides that an individual shall be disqualified for benefits for any week with respect to which the individual is receiving or has received payment in the form of any of the following:

- 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. . . . 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.

In interpreting statutes, the words of the statute should be given their plain and generally accepted meaning. Judges should interpret statutes to avoid interpretations that produce strained, unreasonable or absurd results. Iowa Federation of Labor v. IDJS, 427 N.W.2d 443, 449 (Iowa 1988). All parts of a statute are to be considered together without giving undue importance to a single or isolated part. The ultimate goal is to ascertain and give effect to the intention of the law making body. The language used in the statute and the purpose for which it was enacted must be examined. Iowa Beef Processors, Inc. v. Miller, 312 N.W.2d 530, 532 (Iowa 1981).

First, the statute itself does not appear to apply to lump-sum payments since it refers to retirement pay or “other similar periodic payment.” The rule regarding such payments likewise refers to retirement pay or “other similar periodic payment.” 871 IAC 24.13(3)e. By definition, a lump-sum payment is a “non-periodic payment.” Merriam Webster's Collegiate Dictionary (10th Ed. 1993) defines “periodic” as “occurring or reoccurring at regular intervals;” “lump” is defined as “Not divided into parts: entire <- sum>.” The United State Department of Labor (DOL) has interpreted the Federal Unemployment Tax Act (FUTA) as not requiring the deduction of lump-sum pension payments using this reasoning. Unemployment Insurance Program Letter No. 22-87, Change 1, Whether Unemployment Compensation must be Reduced when Amounts are Rolled Over into Eligible Retirement Plans (U.S. Department Of Labor (DOL), June 19, 1995). Since § 3304(a)(15), FUTA sets only minimum requirements for deducting pension payments, however, the DOL has advised that states are free to treat a lump-sum payment as a “similar periodic payment” and have the option of deducting it in the week it is paid, the week following the claimant's last week of work, or to allocate it over a number of weeks following the last week of work. Id.

There is no provision of Iowa law—either by statute or rule—that explicitly provides for the deduction of a non-periodic lump-sum retirement payment. The Agency, however, has apparently used 871 IAC 24.13(1), which sets forth the procedures for deducting various

payments from benefits, as providing the authority for and the formula for deducting a lump-sum retirement payment. Since 871 IAC 24.13(1) states that any payments defined under rule 871 IAC 24.13(3) shall be deducted using the procedures in the rules until the payment is exhausted, the Agency applied that formula to the lump-sum pension. I conclude that the Agency employed a reasonable interpretation of the statute and rule to deduct the lump-sum payment. The Agency used only the employer contributions, divided them by the claimant's average weekly wage to figure the number of weeks (11.58 weeks) to which the payment should be applied. This would make the claimant ineligible for the 11 weeks from May 7 to July 22, 2006. She would also be ineligible for benefits for the week ending July 29, 2006, because the remainder of the pension payment would equal \$259.25, which exceeds the claimant's weekly benefit amount.

The fact that part of the distribution was not paid out directly to the claimant but was used to apply to a loan does not change the result in this case. She received the benefit of that part of the distribution since it paid off a debt that she would have to repay. Also, the claimant believes the Agency should not have taken so long to make its decision, but there is no deadline for issuing determinations and the delay would not make the decision invalid or not enforceable.

DECISION:

The unemployment insurance decision dated June 20, 2006, reference 02, is affirmed. The claimant is ineligible for unemployment insurance benefits from May 7 to July 29, 2006, due to the receipt of a deductible pension payment.

saw/kkf