

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PROPHET LIVINGOOD**  
Claimant

**APPEAL NO. 06A-UI-10988-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 08/13/06 R: 03  
Claimant: Appellant (1)**

Section 96.5-5 – Pension Pay

**STATEMENT OF THE CASE:**

Claimant appealed a representative's decision dated November 3, 2006, reference 02, that concluded claimant was ineligible for the One week ending September 16, 2006 for unemployment insurance benefits in the amount of \$240.00. A telephone hearing was scheduled and held on November 30, 2006 pursuant to due notice. Claimant did not participate. Exhibits from the administrative file were admitted into evidence.

**ISSUE:**

The issue is whether pension pay was deducted for the correct period and amount.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's employment with employer was separated on August 13, 2006 and claimant received 401k pension pay in the amount of \$514.00 based upon cash out of this pension plan. Claimant is not receiving ongoing pension benefit payments.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that pension benefits were deducted for the correct period.

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.

The entire amount was correctly deducted from the one week of benefits following the separation. Claimant should have had a disqualification for one full week. Benefits should have been withheld September 10, 2006 through September 16, 2006. The disqualification is week by week. Claimant asserts that the disqualification should only reduce the gross amount of unemployment benefits for which he is entitled. This is not correct. The reduction is for the week the benefits were received.

**DECISION:**

The November 3, 2006, reference 02, decision is affirmed. The pension pay was deducted for the correct period. Claimant received a one-time lump sum pension payout from a 401k program totaling \$514.00 which must be used to reduce receipt of unemployment benefits. Claimant is not entitled to benefits for the one week ending September 16, 2006.

---

Marlon Mormann  
Administrative Law Judge

---

Decision Dated and Mailed

mdm/pjs

