

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROBERT L BURNS Claimant EMPLOYER'S MUTUAL CASUALTY CO Employer	68-0157 (9-06) - 3091078 - EI APPEAL NO. 16A-UI-05413-TN-T ADMINISTRATIVE LAW JUDGE DECISION OC: 03/06/16 Claimant: Appellant (1)
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Section 96.5(5)c – Receipt of Pension

STATEMENT OF THE CASE:

Robert Burns, the claimant, filed a timely appeal from the May 9, 2016 (reference 06) decision which deducted pension pay from his unemployment insurance benefits. After due notice was issued, a telephone hearing was held on May 26, 2016. The claimant participated. The employer participated by Ms. Elizabeth Nigut, Senior Vice President of Human Resources. Department Exhibits D-1, D-2, and D-3 were admitted into the hearing record.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Robert Burns was separated from his employment with Employer's Mutual Casualty Company on March 1, 2016 and was eligible to receive a pension that was 100 percent funded by the employer in the amount of \$54,352.83 before withholding taxes. Because pension pay is considered to be compensation, the claimant was disqualified for benefits. If the portion of the pension pay contributed by the employer equals or exceeds the claimant's weekly benefit amount, the claimant is not qualified to receive unemployment insurance benefits. The Agency prorated the amount of the lump sum pension payment that the claimant received and determined that the pension pay when prorated equaled or exceeded Mr. Burns' weekly benefit amount, and that the claimant was ineligible to receive unemployment insurance benefits from April 10, 2016 until February 4, 2017.

REASONING AND CONCLUSIONS OF LAW:

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

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 paragraph "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. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

Because the employer's contribution was 100 percent, that portion of the employer's pension contribution paid in a lump sum but converted to a weekly figure equals or exceeds Mr. Burns' weekly benefit amount from April 10, 2016 through February 4, 2017. The pension pay was correctly deducted.

DECISION:

The representative's decision dated May 9, 2016 (reference 06) is affirmed. The claimant is ineligible to receive unemployment insurance benefits from April 10, 2016 through February 4, 2017 because the claimant received a lump sum pension payment that was 100 percent funded by the employer, which when prorated equals or exceeds the claimant's weekly benefit amount for that period.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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