

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RODNEY L RILEY
Claimant

APPEAL 18A-UI-04113-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 01/07/18
Claimant: Appellant (4)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(5) – Receipt of Pension

STATEMENT OF THE CASE:

Claimant filed an appeal from the March 23, 2018, (reference 04) decision that deducted pension benefit from his unemployment insurance benefits. After due notice was issued, a hearing was held by telephone conference call on April 25, 2018. Claimant participated. Claimant's Exhibit A was received.

ISSUES:

Did the claimant file a timely appeal?

Were the claimant's pension benefits correctly deducted from his unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant received the decision in the last week of March. When he went to the post office in Essex to file his appeal on April 2, he discovered the post office was closed so the floors could be refinished. He did not realize he could file his appeal online until the next day April 3 when he filed the appeal. His appeal was delayed due to the post office being unexpectedly closed on a business day.

The claimant filed a claim for benefits with an effective date of January 7, 2018. He did not begin receiving his pension from his former employer until March 2018. He is receiving \$1984.14 gross each month. His employer contributed sixty percent to his pension and he contributed forty percent. In the month of March the claimant only collected benefits for the week ending March 3, 2018. His weekly deduction for pension is correctly calculated at \$274.71. ($1984.14 \times 12 = \$23,809.68$ divided by 52 weeks = $\$457.87 \times .60\% = 274.71$)

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to timely appeal the fact-finder's decision because the post office was unexpectedly closed on April 2, when claimant went to file his appeal. The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to the fact that the United States Postal Service office was closed on April 2, 2018. (See 871 IAC 24.35(2)). Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the pension was not deducted correctly.

Iowa Code section 96.5(5) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

5. Other compensation.

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) 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 subparagraph, 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.

b. 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", subparagraph (1), (2), or (3), 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.

The agency deducted pension benefits from the claimant's unemployment insurance benefits beginning on January 7, 2018. Since the claimant did not begin receiving the pension until March 2018 no deduction from his unemployment insurance benefits should begin prior to the week ending March 3, 2018.

DECISION:

The March 23, 2018, (reference 04), decision is modified in favor of the appellant. The claimant did file a timely appeal. The pension was not deducted correctly.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs