

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAYMOND R MCATEE
Claimant

APPEAL NO: 14A-UI-03615-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF DUBUQUE
Employer

**OC: 11/07/10
Claimant: Appellant (1)**

Section 96.5-5C – Pension
Section 96.6-2 – Timeliness of Appeal
871 IAC 24.35(2) – Appeal Delay

STATEMENT OF THE CASE:

The claimant appealed a department decision dated November 17, 2010, reference 03, that held he received a monthly deductible pension from benefits that would be prorated to a weekly amount and deducted effective November 8, 2009. A telephone hearing was held on April 24, 2014. The claimant participated. Gina Noel, Personnel Assistant, participated for the employer. Claimant Exhibit A was received as evidence.

ISSUE:

Whether the claimant filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The department mailed the decision to claimant's address of record on December 11, 2009 with an appeal deadline date of December 21. The claimant signed a department appeal form on March 31, 2014 that was faxed a local Workforce office to UI Appeals on April 1, 2014. Claimant submitted the appeal after receiving March 27, 2014 department decisions he was overpaid benefits \$52.00 and \$13.00. Claimant was unaware of this decision as he never received it.

Claimant's weekly benefit amount on his November 7, 2010 claim is \$210.00. He claimed for and received this weekly benefit for the week ending November 10 \$210.00. The department determined he had been receiving an IPERS monthly pension of \$93.08 that is prorated to a weekly amount of \$13.00. The department noted the \$13.00 should have been deducted from claimant's weekly claim reducing his benefit entitlement to \$197.00. The department record shows claimant began receiving the reduced weekly amount of \$197.00 thereafter.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

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. . . . 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.

871 IAC 24.35(2) provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The administrative law judge concludes claimant filed a timely appeal. The claimant never received the department pension deduction decision and appealed the overpayment within ten days when he learned about it.

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 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.

The administrative law judge further concludes claimant received a deductible pension that should be applied to claimant's November 7, 2010 claim.

Claimant admits he received the IPERS monthly pension. There is no explanation why the weekly \$13.00 (prorated) amount was not applied to the week ending November 13, but then was applied to the weeks thereafter. Claimant received a benefit of \$210.00 and then \$197.00 for the weeks thereafter.

DECISION:

The department decision dated November 17, 2010, reference 03, is affirmed. The claimant filed a timely appeal. The claimant did receive a deductible pension effective November 7, 2010.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css