

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

NANCY G PETSCHÉ
7842 OLD HWY RD
PEOSTA IA 52068-9603

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

Appeal Number: 06A-UI-05763-DT
OC: 04/23/06 R: 04
Claimant: Appellant (4)

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 – Receipt of Pension

STATEMENT OF THE CASE:

Nancy G. Petsche (claimant) appealed a representative's May 24, 2006 decision (reference 01) that concluded she was qualified to receive unemployment insurance benefits but that they would be reduced due to the receipt of a pension. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on June 21, 2006. The claimant participated in the hearing. The record was held open through June 27, 2006, at which time Claimant's Exhibit A was admitted to the record. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant started working for the employer in February 1986. She worked full time for the American Red Cross (employer), a not-for-profit corporation. Her last day of work was October 26, 2005. She was bumped from her prior position and laid off at that time.

The claimant received severance pay for six months. As of March 1, 2006, the claimant's pension from the employer became active, with her first check being issued on March 31, 2006 in the gross amount of \$515.85, her total monthly benefit amount. A portion of the benefits were based upon \$130.28 the claimant had paid into the pension system for a 10 – 12 year period. The pension attributable to the claimant's contributions was \$130.28; the pension attributable to the employer is \$377.93. This totals \$508.21; the source of the difference of \$7.64 between the total pension amounts and the gross monthly pension checks was not determined. The claimant's pension based upon her contributions attributed to 25.635 percent of the gross total benefits of \$508.21. Applying that same percentage to the gross weekly prorated pension payment of \$119.04 ($\$515.85 \times 12/52$), the weekly portion of the pension allocation attributable to the claimant's contributions is \$30.52 ($\$119.04 \times 25.635\%$).

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant's pension benefits were properly deducted from her benefit eligibility.

Iowa Code § 96.5-5(c) 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:

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. [Emphasis added.]

The employer was a base period employer of the claimant, and its pension to her is deductible from her eligibility for unemployment insurance benefits. However, the portion of the pension based on her contributions to the pension program does not reduce her unemployment insurance benefit eligibility. Of the weekly pension allocation of \$119.04, only \$88.52 (rounded to \$89.00) is deductible from the claimant's unemployment insurance benefit eligibility.

DECISION:

The representative's May 24, 2006 decision (reference 01) is modified in favor of the claimant. The claimant is eligible for unemployment insurance benefits reduced by private pension benefits; however the entire benefit payment is not deductible, only \$88.52 per week, rather than \$119.04 per week.

ld/kkf