

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS L FOGLEMAN
Claimant

APPEAL NO: 09A-UI-06740-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 09/28/08

Claimant: Appellant (2)

Section 96.5-5 – Receipt of Pension

STATEMENT OF THE CASE:

Dennis L. Fogleman (claimant) appealed a representative's April 20, 2009 decision (reference 04) that concluded the claimant was ineligible for benefits for the weeks between November 30, 2008 and February 14, 2009 due to receipt of a lump sum pension payment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 28, 2009. The claimant participated in the hearing. 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.

ISSUE:

Was the claimant's lump sum pension payment allocated and deducted?

FINDINGS OF FACT:

The claimant established an unemployment insurance benefit year effective September 28, 2008. His base period was therefore set as April 1, 2007 through March 31, 2008. His weekly benefit amount was determined to be \$355.00. The claimant base period exclusively included wage credits from his employment with Nationwide Insurance (employer), where he had worked for approximately seven years before taking employment elsewhere on or about May 16, 2008. He worked at the new employer until approximately October 1, 2008, when he became unemployed. In a representative's decision issued on October 21, 2008 (reference 03), the Agency determined that Nationwide was exempt from charge as the claimant's employment had ended due to quitting to accept other employment.

In late 2008 Nationwide contacted the claimant to indicate that he had pension funds accrued which he could either take immediately as a lump sum, or else he could not receive any of it until he reached age 59 in 2035. The pension had been 100 percent funded by contributions by the employer during the claimant's employment. The claimant had numerous financial obligations due to his unemployment, and so chose to take the lump sum payment. On December 29, Nationwide cut a check in a gross amount of \$6,861.47. The check indicated a "pay begin date" of December 1, 2008 and a "pay end date" of December 31, 2008.

The Agency representative's decision allocated the payment by dividing the total gross pension payout of \$6,861.47 by the claimant's average weekly wage during the high quarter of his base period, \$601.48. As a result, the representative concluded that the pension should be allocated to 11.41 weeks of benefit eligibility. The allocation start date of November 30 is the benefit week closest to December 1, the pay begin date on the check. Starting with that date, 11.41 weeks goes through February 14, 2009.

REASONING AND CONCLUSIONS OF LAW:

Pension pay can be allocated to a period of unemployment, and if so it must be deducted from the claimant's unemployment insurance benefit eligibility.

The Federal Unemployment Tax Act (FUTA), 26 U.S. C. § 3301 et seq., creates a cooperative federal-state program of unemployment compensation for unemployed workers. FUTA allows states discretion in setting up their unemployment insurance system but also establishes certain minimum federal standards that a state must satisfy in order for employers in a state to receive credit against their Federal unemployment tax. See 26 U.S.C. § 3304(a).

The standard at issue in this case, FUTA at 26 U.S.C. § 3304(a)(15) generally provides for the offset of periodic pension payments against unemployment insurance benefit eligibility, specifying that that unemployment compensation payable to an individual be reduced for any week "which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual," provided (a) the payment "is under a plan maintained (or contributed to) by a base period employer or chargeable employer," and (b) "the State law may provide for limitations on the amount of any such a reduction to take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment." *Id.*, (emphasis added.) The purpose of this provision is to prevent a claimant from in effect "double-dipping" by drawing unemployment compensation from an employer at the same time the person is receiving retirement payments that the employer has in whole or in part funded. Watkins v. Cantrell , 736 F.2d 933, 937-39 (4th Cir. 1984).

However, the federal law does not require states to offset lump sum pension payments against unemployment insurance benefits. "In the case of lump sum retirement payments, States have the option whether to treat them as 'similar periodic payments' which are deductible under their laws, and if they treat them as such they have the further option of providing in their laws whether the payments shall apply only to the week in which they were paid, or to the week following the last week worked prior to retirement, or whether they shall be allocated to the weeks or months or other applicable periods following the last week worked prior to retirement." DOL, ETA Unemployment Insurance Program Letter No. 22-87, para. 6(e).

Implementing the pension offset provisions generally, Iowa Code § 96.5-5 provides in part:

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.

[Emphasis added.]

The statute is therefore silent on how to treat lump sum payments. The Agency has adopted a further rule regarding such allocations; 871 IAC 24.13 provides in part:

24.13(1) *Procedures for deducting payments from benefits.* Any payment defined under subrules 24.13(2) and 24.13(3) made to an individual claiming benefits shall be deducted from benefits in accordance with the following procedures until the amount is exhausted . . . The individual claiming benefits is required to designate the last day paid which may indicate payments made under this rule. The employer is required to designate on the Form 65–5317, Notice of Claim, the amount of the payment and the period to which the amount applies. If the individual or the employer does not designate the period to which the amount of the payment applies, and the unemployment insurance representative cannot otherwise determine the period, the unemployment insurance representative shall determine the week or weeks following the effective date of the claim to which the amount of the payment applies by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. . . . The amount of any payment under subrule 24.13(3) shall be fully deducted from the individual's weekly benefit amount on a dollar-for-dollar basis.

...

24.13(3) *Fully deductible payments from benefits.* The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

...

e. Pension, retirement, annuity, or any other similar periodic payment made under a plan maintained and contributed to by a base period or chargeable employer. An individual's weekly benefit amount shall only be reduced by that portion of the payment which is the same percentage as the percentage contribution of the base period or chargeable employer to the plan.

[Emphasis added.] The rule is therefore also silent as to specifically how to treat a lump sum payment, as contrasted with a "periodic payment."

In interpreting statutes, the words of the statute should be given their plain and generally accepted meaning. Judges should interpret statutes to avoid interpretations that produce strained, unreasonable or absurd results. Iowa Federation of Labor v. IDJS, 427 N.W.2d 443, 449 (Iowa 1988). All parts of a statute are to be considered together without giving undue importance to a single or isolated part. The ultimate goal is to ascertain and give effect to the intention of the law making body. The language used in the statute and the purpose for which it was enacted must be examined. Iowa Beef Processors, Inc. v. Miller, 312 N.W.2d 530, 532 (Iowa 1981).

Applying these principles to the statute in question, the words of the statute are not clear and unambiguous and it is necessary to interpret what the statute means. First, the statute itself does not appear to apply to lump sum payments since it refers to retirement pay or "other similar periodic payment." The rule regarding such payments likewise refers to retirement pay or "other similar periodic payment." 871 IAC 24.13(3)(e). By definition, a lump sum payment is a "non-periodic payment." The United State Department of Labor (DOL) has interpreted the federal law as not requiring the deduction of lump sum pension payments using this reasoning. Because § 3304(a)(15), FUTA sets only minimum requirements, states are free to not treat a lump sum payment as a "similar periodic payment" at or, or to treat a lump sum payment as a "similar periodic payment." Even if a state chooses to treat and have the option of deducting it in the week it is paid, the week following the claimant's last week of work, or to allocate it over a number of weeks following the last week of work. However, there is no provision of Iowa law--either by statute or rule--that clearly and specifically provides for the deduction of a non-periodic lump sum retirement or pension payment.

Consistent with the explicit public policy regarding the unemployment insurance law as set out in Iowa Code § 96.2, the unemployment insurance law is to be applied "liberally to achieve the legislative goal of minimizing the burden" of unemployment on individuals; the law's disqualification provisions are to be construed strictly. Gaborit v. Employment Appeal Board, 734 N.W.2d 554 (Iowa App. 2007); Bridgestone/Firestone, Inc. v. Employment Appeal Bd., 570 N.W.2d 85 (Iowa 1997); see also, Smith v. IESC, 212 N.W.2d 471 (Iowa 1973); Brumley v. IDJS, 292 N.W.2d 126 (Iowa 1980); Crooks v. Employment Appeal Board, 460 N.W.2d 182 (Iowa App. 1990). Applying the "periodic payment" allocation provisions to the lump sum payment is not a liberal interpretation, and does not construe a disqualification provision strictly.

The administrative law judge therefore concludes that the Agency representative erroneously applied the procedure for deducting period payments set forth at 871 IAC 24.13(1) to the lump sum payout the claimant received. The administrative law judge concludes the lump sum payment was not deductible from the claimant's unemployment insurance benefits.

DECISION:

The representative's April 20, 2009 decision (reference 04) is reversed. The lump sum pension payment was incorrectly deducted. Benefits are allowed, provided the claimant is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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