

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CASEY R GRAY
Claimant

APPEAL 17A-UI-13436-JC

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 06/11/17
Claimant: Appellant (2)**

Iowa Code § 96.5(5)– Receipt of Pension
Iowa Admin Code chapter 25- Benefit payment control

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 22, 2017, (reference 01) decision that deducted pension from benefits. The parties were properly notified about the hearing. An in-person hearing was held in Des Moines (1000 East Grand Avenue) on January 23, 2018. The claimant participated personally. Juli Putzier, Job Insurance Quality Auditor II, also participated. Department's Exhibits A and Claimant's Exhibit 1 were received into evidence. The administrative law judge took official notice of the claimant's unemployment insurance benefits records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant's 401K withdrawal deductible from benefits?

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: The claimant filed a new claim for unemployment insurance benefits with an effective date of June 11, 2017. The claimant filed his claim in response to his permanent separation with Electrical Power Products. The claimant filed for and received a total of \$2,610.00 in unemployment insurance benefits for the weeks between August 27, 2017 and October 7, 2017 (Department Exhibit A1-6).

The claimant was informed of the unemployment insurance rules, when he established his claim for unemployment insurance benefits and upon receipt of the claimant handbook. The Unemployment Insurance Handbook included instructions for properly filing claims and that failure to follow the instructions in the handbook may lead to an improper payment of benefits that must be paid back. It also stated that the claimant was responsible for understanding the contents of the handbook, and if he did not, he must contact Iowa Workforce Development (IWD) (Department Exhibit A1-5).

In the claimant handbook, applicants are also informed that they may be requested to participate in a quality control audit, and failure to cooperate can result in denial of benefits. Based upon the US Department of Labor guidelines, claims are selected at random for audits, and the claimant was first notified that his claim would be audited on September 25, 2017 when

he received a notice. The claimant responded to the notice and participated in the first fact-finding interview with Juli Putzier, Quality Control Auditor. The claimant also responded to Quality Control questionnaire and timely returned it to IWD on October 6, 2017.

A fact-finding interview was then scheduled for October 13, 2017, to address the claimant's possible pension and whether the claimant was able and available for work. There was also a second fact-finding interview on December 11, 2017 (Department Exhibit A1-3). The claimant participated, and explained to Ms. Putzier that he had withdrawn a lump sum amount from his 401K, as a 401K hardship withdrawal, with penalty, to address mounting medical costs and expenses. The withdrawal was not part of any periodic payment or contingent upon retirement. The claimant had not previously disclosed the payment to IWD for consideration.

As a result of information provided at the fact-finding interview, an additional investigation was performed. The employer through its agent, provided information that while employed, the claimant had participated in a 401K program, based upon 100% contribution by the employer. The employer reported the gross amount of \$5,330.94 was dispersed on August 30, 2017, in response to a hardship request (Department Exhibit A1-8). However, the amount was actually dispersed (with a net amount of \$4,531.31) on September 14, 2017 (Claimant Exhibit 1).

Upon receipt of the information from the employer, Ms. Putzier applied the lump sum 401K hardship as pension or other periodic payment, taking into consideration that it was 100% funded by the employer. She calculated the claimant's average weekly wage, and then prorated the amount beginning August 30, 2017, against the claimant's benefits received (Department Exhibit A1-7). The investigation concluded the claimant should receive prorated benefits for the week ending September 2, 2017. He was disqualified from benefits for the period of September 3, 2017 through October 21, 2017, and eligible for partial benefits effective October 28, 2017, if he filed for benefits that week. (The claimant discontinued filing after October 7, 2017).

The administrative law judge would note that the deductions from benefits were applied to the claimant's benefits beginning the week ending September 2, 2017 (based upon a report of him receiving benefits on August 30, 2017 by the employer representative). The claimant however did not receive any payment until September 14, 2017 (Claimant Exhibit 1).

Based upon the calculations applied to the payment, the following overpayment was established: (Department Exhibits A2-3 and A4-2)

WEEK ENDING	WAGES PER CLAIMANT	WAGES PER EMPLOYER	UI BENEFITS PAID	UI BENEFITS ENTITLED	OVERPAYMENT OF BENEFITS
09/02/17	0	416.00	450.00	34.00	416.00
09/09/17	0	694.00	450.00	0	450.00
09/16/17	0	694.00	450.00	0	450.00
09/23/17	0	694.00	450.00	0	450.00
09/30/17	0	694.00	450.00	0	450.00
10/07/17	168.00	694.00	394.00	0	394.00
				SUBTOTAL	2610.00
				NET TOTAL	2610.00

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the withdrawal is **not** deductible from benefits and was improperly deducted from the claimant's benefits.

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.

Iowa Admin. Code r. 871-24.13(3)e provides:

(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.)

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the payment received by the claimant does not meet the definition of a pension or other similar "periodic payment" which would be subject to deduction from benefits.

In this case, the claimant received a single, lump sum 401K hardship withdrawal in the amount of \$5,330.94 on September 14, 2017. The withdrawal was not based upon retirement, but rather a single payment, requested to address mounting medical expenses and financial issues. Because the lump sum payment of funds was not predicated upon the claimant's retirement from employment and not made as a "periodic payment" of funds according to the plain language of the statute, and the payment is subject to the applicable early withdrawal income taxes and penalty, as would be the case for medical or other expenses prior to retirement age, the funds are not considered to be in the form of a "periodic payment" of pension or retirement benefits and are not deductible from benefits. Accordingly, the administrative law judge concludes the withdrawal was not subject to deduction, and improperly deducted from the claimant's benefits.

DECISION:

The December 22, 2017, (reference 01) unemployment insurance decision is reversed. The pre-retirement lump-sum pension withdrawal is not deductible from benefits and improperly deducted from his benefits.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs