

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

ROBERT L HINSCH
819 CHATEAU KNOLL
BETTENDORF IA 52722

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

Appeal Number: 04A-UI-10382-CT
OC: 08/29/04 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)c – Pension Deduction

STATEMENT OF THE CASE:

Robert Hinsch filed an appeal from a representative's decision dated September 9, 2004, reference 01, which held that his job insurance benefit was being reduced because of his receipt of a military pension. After due notice was issued, a hearing was held by telephone on October 19, 2004. Mr. Hinsch participated personally.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Hinsch retired from the military on March 31, 2004 and became eligible to receive a pension effective April 1, 2004. As of July 1, 2004, his monthly

pension amount is \$1,280.00. Of this amount, \$287.29 is diverted to his ex-wife pursuant to the provisions of their divorce decree. Of his monthly benefit, \$692.00 is considered a Veteran's Administration (VA) waiver. Mr. Hinsch has a service-connected disability for which he is eligible to receive VA benefits.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Hinsch's job insurance benefits should be reduced and, if so, to what extent. He is receiving a military pension contributed to by his base period employer, the United States Army. Mr. Hinsch is eligible to receive \$1,280.00 per month as a military pension. Although he does not see the money that is diverted to his wife, the administrative law judge considers it income to him. It is money taken from his pension to pay a legal obligation. It is the same as if an individual had money diverted from his pay to pay a creditor. The money remains income to the individual receiving the pay.

The administrative law judge concludes that the amount designated as VA waiver should not be counted as income to Mr. Hinsch. Payments by the VA to an individual for service-connected disability are not deductible from job insurance benefits. See 871 IAC 24.13(4)i. Therefore, the \$692.00 designated as VA waiver is not counted in Mr. Hinsch's pension for purposes of determining the amount of deductions from his job insurance benefits.

The total amount of Mr. Hinsch's military pension that is to be deducted from his job insurance benefits is \$588.00 per month (\$1,280.00 - \$692.00). The \$588.00 per month converts to a weekly amount of \$135.69 ($\$588.00 \times 12 = \$7,056.00$ divided by 52). This amount, rounded to \$136.00, is the amount to be deducted from his weekly job insurance benefits.

DECISION:

The representative's decision dated September 9, 2004, reference 01, is hereby modified. Mr. Hinsch's job insurance benefits shall be reduced by \$136.00 per week, not \$295.00, because of his receipt of a military pension.

cfc/b