

**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**

**DOREEN K SCHOONOVER
1700 W 16TH ST
SIOUX CITY IA 51103**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**DENNIS MCELWAIN
ATTORNEY AT LAW
PO BOX 1194
SIOUX CITY IA 51102-1194**

**Appeal Number: 05A-UI-06414-RT
OC: 05/22/05 R: 01
Claimant: Appellant (1)**

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 – Other Compensation (Pensions)

STATEMENT OF THE CASE:

The claimant, Doreen K. Schoonover, filed a timely appeal from an unemployment insurance decision dated June 13, 2005, reference 04, amending reference 01, determining that the claimant was eligible for a reduced unemployment insurance benefit because records indicate that she is currently receiving a private pension, which is deductible for unemployment insurance benefits. After due notice was issued, a telephone hearing was held on July 7, 2005, with the claimant participating. The claimant was represented by Jay M. Smith, Attorney at Law, who substituted for Dennis McElwain, Attorney at Law. Susan Fenceroy, Human Resources Specialist, participated in the hearing for the employer, Sioux City Community School District. Department Exhibit One and Employer's Exhibits One and Two were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce

Development Department unemployment insurance records for the claimant. This appeal was consolidated with appeals 05A-UI-06412-RT and 05A-UI-06413-RT for the purposes of the hearing with the consent of the parties.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits One and Two and Department Exhibit One, the administrative law judge finds: The claimant filed for unemployment insurance benefits effective May 22, 2005, and began receiving benefits. The claimant's weekly benefit amount was originally \$310.00, but was reduced \$97.00 for a pension payment the claimant received from Iowa Public Employees Retirement System (IPERS). The claimant, at all material times hereto, beginning in May of 2005, received a monthly pension payment from IPERS in the amount of \$694.00 per month. This yearly total would be \$8,328.00. The employer contributed 60 percent to the pension plan. Sixty percent of \$8,328.00 would be \$4,997.00. This figure reflects the employer's contribution to the claimant's yearly pension payments. Dividing this amount by 52 weeks to determine the employer's portion of the claimant's weekly pension amount would be \$97.00 rounded off. This would be the amount that would be deducted from the claimant's weekly benefit amount of \$310.00 to determine the claimant's adjusted weekly benefit amount, which would be \$213.00. This was the amount paid to the claimant for two weeks, benefit weeks ending May 28, 2005, and June 4, 2005. As decided in prior decisions, the claimant was not entitled to these benefits and is overpaid these benefits.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant is receiving pension benefits or payments that were properly deducted from the claimant's unemployment insurance benefits. The administrative law judge concludes that the claimant is receiving pension benefits and the amount was properly deducted from her unemployment insurance benefits.

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 concludes that, at all material times hereto, the claimant was receiving an IPERS pension payment in the amount of \$694.00 per month. As set out in the findings of fact, the claimant's yearly pension figure would be \$8,328.00. The employer contributed 60 percent of this; so, of the yearly pension amount, \$4,997.00 would be deductible from the claimant's unemployment insurance benefits. Determining this on a weekly basis by dividing by 52 weeks indicates that \$97.00, rounded off, would be deducted from the claimant's weekly benefit amount because of the employer's contribution to the claimant's pension payments. Accordingly, the administrative law judge concludes that the claimant is receiving a pension and that the claimant's pension should reduce her unemployment insurance benefits in the amount of \$97.00. The claimant's weekly benefit amount was \$310.00, and reduced by \$97.00 would result in a weekly benefit amount of \$213.00. This was the amount that was initially determined by Iowa Workforce Development. However, in a decision in Appeal Number 05A-UI-06412-RT, the administrative law judge concluded that the claimant was not entitled to receive unemployment insurance benefits and further, in Appeal Number 05A-UI-06413-RT, the administrative law judge concluded that the claimant was overpaid unemployment insurance benefits in the amount of \$426.00 for the benefits she had received for two weeks, benefit weeks ending May 28, 2005, and June 4, 2005, even though those benefits were properly determined based upon the claimant's pension payments.

DECISION:

The representative's decision of June 13, 2005, reference 04, amending reference 01, is affirmed. The claimant, Doreen K. Schoonover, is receiving a pension payment, which would reduce her unemployment insurance benefits by \$97.00, or would result in a weekly benefit amount of \$213.00. However, in a decision in Appeal Number 05A-UI-06412-RT, the administrative law judge concluded that the claimant was not entitled to receive any unemployment insurance benefits because her separation from her employer, Sioux City Community School District, was disqualifying.

kjw/kjw