



**DEPARTMENT OF HUMAN RESOURCES
EMPLOYMENT SECURITY ADMINISTRATION**

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383-5032

— DECISION —

CORRECTED COPY

BOARD OF APPEALS

THOMAS W. KEECH
Chairman

HAZEL A. WARNICK
MAURICE E. DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

STATE OF MARYLAND

HARRY HUGHES
Governor

KALMAN R. HETTLEMAN
Secretary

DECISION NO.: 1486-BR-82

DATE: October 21, 1992

APPEAL NO; 07655

S. S. NO.:

L. O. NO.: 9

APPELLANT: CLAIMANT

CLAIMANT: Thomas A. Tosches

EMPLOYER: Baltimore City Department
of Public Works

ISSUE: Whether the Claimant is receiving or has received, a governmental or other pension, retirement or retired pay, annuity or other similar periodic payment, based on any previous work, which is equal to or in excess of his weekly benefit amount, within the meaning of Section 6(g) of the Maryland Unemployment Insurance Law.

NOTICE OF RIGHT OF APPEAL TO COURT

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE SUPERIOR COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

November 20, 1982

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

INTRODUCTION

The Board is issuing a Corrected Decision in this case because the first decision contained a mathematical error. The Board would like to note for the record that nobody's perfect.

REVIEW ON THE RECORD

After having reviewed the record in this case, the Board of Appeals modifies the decision of the Appeals Referee. Where the Claimant receives a hi-weekly pension check, the calculation of the deductions from his unemployment checks should be simple.

The Claimant receives \$580.45 every two weeks, or \$290.23 per week. Since the pension is one to which the Employer contributed only part of the amount, Section 6(G) (1)(ii) provides that only one half of the pension amount should be deducted from benefits. One half of the weekly pension amount is \$145.00. Since the Claimant's weekly benefit amount (for unemployment insurance benefit purposes) is \$140.00, the Claimant is ineligible for benefits, as his weekly pension amount exceeds his weekly benefit amount.

The Appeals Referee has correctly pointed out that, since pensions are deducted from unemployment benefits only where the pensions are received from base period employers, the Claimant's pension amount will not be deductible from benefits due forever, since he may in future years file a claim for which the City of Baltimore is not a base period employer.

DECISION

The Claimant is disqualified from the receipt of benefits because of the deductions mandated by Section 6(g)(1) of the Maryland Unemployment Insurance Law.

The decision of the Appeals Referee is affirmed. The Board's decision of October 15, 1982 is corrected.


Chairman


Associate Member

K:W
gm

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - TOWSON



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DECISION NO.: 1486-BR-82

DATE: October 15, 1982

APPEAL NO.: 07655

S. S. NO.:

L. O. NO.: 9

APPELLANT: CLAIMANT

CLAIMANT: Thomas A. Tosches

EMPLOYER: Baltimore City Department
of Public Works

ISSUE: Whether the Claimant is receiving or has received a governmental or other pension, retirement or retired pay, annuity or other similar periodic payment, based on any previous work, which is equal to or in excess of his weekly benefit amount, within the meaning of Section 6(g) of the Maryland Unemployment Insurance Law.

NOTICE OF RIGHT OF APPEAL TO COURT

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE SUPERIOR COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

November 14, 1982

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

After having reviewed the record in this case, the Board of Appeals modifies the decision of the Appeals Referee. Where the Claimant receives a hi-weekly pension check, the calculation of the deductions from his unemployment checks should be simple.

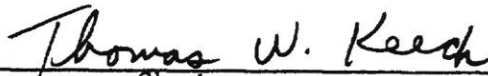
The Claimant receives \$580.46 every two weeks, or \$260.23 per week. Since the pension is one to which the Employer contributed only part of the amount, Section 6(g) (1)(ii) provides that only one half of the pension amount should be deducted from benefits. One half of the weekly pension amount is \$130.00. Since the Claimant's weekly benefit amount (for unemployment insurance benefit purposes) is \$140.00, the Claimant is eligible for \$140.00 minus \$130.00, or \$10.00 per week.

The Appeals Referee has correctly pointed out that, since pensions are deducted from unemployment benefits only where the pensions are received from base period employers, the Claimant's pension amount will not be deductible from benefits due forever, since he may in future years file a claim for which the City of Baltimore is not a base period employer.

DECISION

The Claimant is entitled to \$10.00 per week in benefits after the deductions mandated by Section 6(g)(1) of the Maryland Unemployment Insurance Law.

The decision of the Appeals Referee is modified to this extent.


Chairman


Associate Member

K:W
gm

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CLAIMANT

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DEPARTMENT OF HUMAN RESOURCES
 EMPLOYMENT SECURITY ADMINISTRATION
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 BALTIMORE, MARYLAND 21201
 383 - 5040

BOARD OF APPEALS

STATE OF MARYLAND
 HARRY HUGHES
 Governor
 KALMAN R. HETTLEMAN
 Secretary

- DECISION -

THOMAS W. KEACH
 Chairman

HAZEL A. WARNICK
 MAURICE E. DILL
 Associate Members

SEVERN E. LANIER
 Appeals Counsel

MARK R. WOLF
 Administrative Hearings Examiner

CLAIMANT: Thomas A. Tosches

DATE: July 7, 1982

APPEAL NO.: 07655

S. S. NO.:

EMPLOYER: Balto. City, Dept. of Public Works

L. O. NO.: 9

APPELLANT: Claimant

ISSUE: Whether the claimant is receiving or has received a governmental or other pension, retirement or retired pay, annuity or other similar periodic payment which is based on any previous work of such individual, which is equal to or in excess of his weekly benefit amount, within the meaning of Section 6(g) of the Law.

NOTICE OF RIGHT TO PETITION FOR REVIEW

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 021201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON

July 22, 1982

- APPEARANCES -

FOR THE CLAIMANT:

Thomas A. Tosches - Claimant

FOR THE EMPLOYER:

Charles Spinner -
 Personnel- Technician IV

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits at Towson effective May 2, 1982.

The claimant had been employed by the Department of Public Works of the City of Baltimore. There was either an abolition of his job or a RIF, resulting in his displacement from employment. The claimant was notified that effective May 7, 1982 he would be laid-off as a result of lack of funds.

The claimant elected to accept an early retirement benefit equivalent to his pay at the rate of \$580.46 hi-weekly, or \$15,134 annually. The retirement benefits received by the claimant are based upon services which he performed for the City of Baltimore and which contributions were made in part by the claimant, and in part by his employer, the City of Baltimore.

At the present time, the benefits which the claimant is receiving represents his contributions withheld from income, previously taxed.

CONCLUSIONS OF LAW

The claimant was separated from his employment with the City of Baltimore, Department of Public Works for reasons beyond his control, without the fault of the claimant, and totally involuntarily. The claimant would be eligible for the receipt of unemployment insurance benefits, but for the receipt of a pension or retirement payment from a base period employing unit for which he performed services, i.e. the City of Baltimore. Pursuant to the provisions of Section 6(g) of the Maryland Unemployment Insurance Law, an individual shall be disqualified for benefits for any week with respect to which he is receiving or has received an amount equal to or in excess of his weekly benefit amount in the form of a pension, annuity or retirement, retirement pay under a plan paid for in whole or in part by a base period employer. Where the individual has performed services for a base period employing unit which pays some, but not all, of the cost of such retirement, then the unemployment insurance weekly benefit amount to which the claimant may be eligible shall be reduced by $\frac{1}{2}$ of such payment. Periodic payments shall be pro-rated on a weekly based and allocated to the period between the periodic payments.

The claimant receives a hi-weekly pension payment of \$580.46 based upon a ten-day work cycle. Each month has a minimum of twenty-one work days. Therefore, the claimant would receive two payments of \$580.46 for twenty work days and \$58.04 for the 21st work day. The total monthly payment would be \$1,218.96. Applying this figure to the contributory pension chart, such retirement payment pro-rated on a weekly basis exceeds the claimant's weekly unemployment insurance benefit amount. Therefore, the determination of the Claims Examiner was not totally warranted. The claimant is not entitled to any benefits due to the receipt of a pension which exceeds his weekly benefit amount. The Claims Examiner improperly utilized a figure of \$1,160 to compute the \$6.00 weekly benefit amount to which he found the claimant to be eligible. Accordingly, the determination of the Claims Examiner must be affirmed and modified.

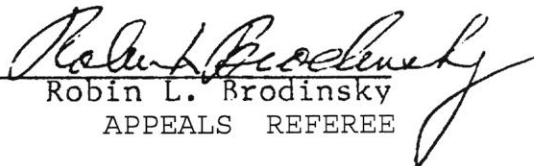
The claimant is not eligible for any unemployment insurance benefits until such time as the City of Baltimore is no longer a base period employing unit.

DECISION

It is held that the claimant is receiving or has received a pension, annuity, retirement or other periodic payment based on employment during the base period pursuant to the provisions of Section 6(g) of the Maryland Unemployment Insurance Law. Benefits are denied for the week ending May 8, 1982 and thereafter until the claimant is no longer receiving a pension, or until such time as the City of Baltimore is no longer the base period employing unit.

As a result of this decision, the claimant has received benefits to which he was not legally entitled and which may be recoverable pursuant to the provisions of Section 17(d) of the Maryland Unemployment Insurance Law.

The determination of the Claims Examiner is affirmed and modified accordingly.


Robin L. Brodinsky
APPEALS REFEREE

DATE OF HEARING: June 30, 1982

ras

(3438 --- Moody)

copies mailed to:

Claimant
Employer
Unemployment Insurance - Towson