

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer
Governor
Mark L. Wasserman
Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201

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Thomas W. Keech, Chairman
Hazel A. Warnick, Associate Member
Donna P. Watts, Associate Member

- D E C I S I O N -

Decision No.: 1522-BH-93

Date: Sept. 16, 1993

Claimant: Robert D. Kimmel, Sr.

Appeal No.: 9306377

S.S. No.:

Employer:

L. O. No.: 40

Appellant: BOARD ASSUMED
JURISDICTION

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 8-1008 of the Labor and Employment Article.

- NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to appeal can be found in many public libraries, in the *Annotated Code of Maryland, Maryland Rules*, Volume 2, B rules.

The period for filing an appeal expires

October 16, 1993

- A P P E A R A N C E S -

FOR THE CLAIMANT:

Robert Kimmel - Claimant

FOR THE EMPLOYER:

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT
John T. McGucken - Legal Counsel

EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced in this case, as well as the Department of Economic and Employment Development's documents in the appeal file.

FINDINGS OF FACT

The claimant had been employed by Crown, Cork and Seal as a tool and die setter from September, 1959 through November 13, 1992. At that point, the plant closed down permanently, ending his job.

The claimant was entitled to a non-contributory pension in the amount of \$928.99 per month effective February 1, 1993.

The claimant was divorced on September 12, 1990. According to the divorce settlement agreement, which was incorporated into the court's order, the claimant's wife became an alternate payee of the pension plan. The claimant's wife thus became entitled to 40% of the claimant's benefits at the time that they were received by the claimant. The claimant's wife also became entitled to the status of surviving spouse in the event that the claimant died.

The claimant's wife, however, does not own 40% of the claimant's pension. The pension is paid in full to the claimant, and the claimant then remits 40% of the amount to his ex-wife. The claimant's ex-wife's entitlement to the benefits is dependent upon the claimant's status. For example, should the claimant die, the claimant's wife would not continue to receive the 40% share ordered by the court, but would instead receive a surviving spouse's benefit in an amount set under the plan.

CONCLUSIONS OF LAW

The entire amount of this pension is deductible under Section 8-1008 of the Labor and Employment Article. Title to the pension, or even a part of the pension, was not transferred to the claimant's wife. The pension is still paid to the claimant in full. He has a court obligation to pay the 40% of the pension to his wife, but it remains his pension. The claimant's wife does not have independent ownership of any pension amount. Her ownership and status are dependent upon the claimant's interest in the pension. For these reasons, the Board concludes that the claimant actually receives 100% of the pension amount. The 40% which the claimant must pay to his ex-wife is a legal obligation which he fulfills from this pension amount, but it does not represent the wife's independent ownership of that 40% of the pension. Therefore, the entire amount of the pension must be deducted.


DECISION

The claimant's benefits must be reduced on account of a retirement payment within the meaning of Section 8-1008 of the Labor and Employment Article. His benefits should be reduced by \$216.00 per week (\$928.99 divided by 4.3) as long as he receives the pension in this amount, or as long as Crown, Cork and Seal remains a base period employer.

The decision of the Hearing Examiner is reversed.


Chairman


Associate Member


Associate Member

DATE OF HEARING: August 10, 1993

kmb

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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - EASTPOINT

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
Mark L. Wasserman, Secretary

Gary W. Wiedel, Administrator
Louis Wm. Steinwedel, Chief Hearing Examiner

Room 501
1100 North Eutaw Street
Baltimore, Maryland 21201

— DECISION —

	Date:	Mailed: 4/22/93
Claimant:	Robert D. Kimmel, Sr.	Appeal No.: 9306377
	S. S. No.:	
Employer:	LO. No.: 40	Appellant: Claimant

Issue: Whether benefits should be reduced on account of the receipt of a pension, under Maryland Code, Title 8 Section 1008. "

— NOTICE OF RIGHT OF FURTHER APPEAL —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY OFFICE OF THE DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT, OR WITH THE BOARD OF APPEALS, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL

May 7, 1993

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES ON
NOTICE APPEALS FILED BY MAIL INCLUDING SELF-METERED MAIL ARE CONSIDERED FILED ON THE DATE OF THE US. POSTAL SERVICE POSTMARK.

— APPEARANCES —

FOR THE CLAIMANT:

Claimant - Present

FOR THE EMPLOYER:

Other: Margo Gillis Tanner, DEED

FINDINGS OF FACT

The claimant was employed by Crown Cork and Seal as a tool and die setter in September, 1959. His separation from employment on November 13, 1992 was due to a loss of his job

because of a plant shutdown.

The claimant received a pension in the amount of \$928.99 per month effective February 1, 1993. The claimant was divorced in 1990 and by way of a court order forty percent of his pension payment belonged to his estranged wife.

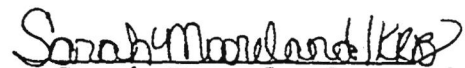
CONCLUSIONS OF LAW

Maryland Code Title 8 Section 1008 states that a retirement payment means an amount in the form of a pension, annuity, or retirement or retired pay from a trust, annuity, profit sharing plan, insurance fund, annuity or insurance contract, or other similar lump sum or periodic payment that is based on any previous covered employment for a base period employer under a plan paid for wholly or partly by a base period employer; and does not include a payment from a State and Federal Worker's Compensation program. For each week in which the secretary finds that an individual who otherwise is eligible for benefits received a retirement payment, benefits will be reduced as calculated by the Agency. In this case, the claimant receives a pension within the meaning of Maryland Code Title 8 Section 1008. However, the amount of the pension should be calculated based on the amount that the claimant receives pursuant to the court order. The claimant receives 60 percent of his pension payment and his wife receives the other 40 percent. Since this amount has been awarded to the claimant's wife through a decree of divorce, the amount is the wife's property and should not be calculated as part of the claimant's pension received for purposes of determining the amount of unemployment insurance benefits.

DECISION

The claimant's benefits should be reduced on account of a retirement payment within the meaning of Maryland Code Labor and Employment Article Title 8 Section 1008 using sixty percent of claimant's pension amount as the basis for determining the amount received. Benefits are allowed on this basis.

The Claim Examiner's determination is modified.


Sarah Mooreland
HEARING EXAMINER