



# Maryland

## Department of Economic & Employment Development

*William Donald Schaefer*  
Governor  
*Mark L. Wasserman*  
Secretary

*Board of Appeals*  
1100 North Eutaw Street  
Baltimore, Maryland 21201  
Telephone: (410) 333-5032

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

**- DECISION -**

Decision No.: 2030 -BH-93

Date: December 1, 1993

Claimant: George M. Carr, Jr.

Appeal No.: 9306706

S.S. No.:

Employer: Tracor Applied Sciences, Inc.

L. O. No.: 43

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 s8-1008 of the Labor and Employment Article.

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**- NOTICE OF RIGHT OF APPEAL TO COURT -**

You may file an appeal from this decision in the Circuit Court for Baltimore City 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 Maryland Maryland Rules*, Volume 2, Brules.

The period for filing an appeal expires

December 31, 1993

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**- APPEARANCES -**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

George Carr, Jr. - Claimant

Employer not represented

John T. McGucken - Agency Counsel

## EVALUATION OF THE EVIDENCE

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearing before the Hearing Examiner, the legal argument made at the hearing before the Board of Appeals, and all 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 was employed by Tracer Applied Sciences, Inc. until his job was abolished in January, 1993. At that time he became eligible to receive a non-contributory periodic pension from this employer, in the amount of \$2,250.00 per month. However, the claimant did not receive the first installment of this periodic pension payment until March 4, 1993.

Upon retirement in January, the claimant filed for unemployment insurance benefits, with a benefit year beginning January 10, 1993. He was found monetarily eligible for a weekly benefit amount of \$223.00.

On March 4, 1993, he received the first installment of his periodic pension. The amount he received was the equivalent of two months of pension.

## CONCLUSIONS OF LAW

Under LE, §8-1008(b), a claimant is disqualified from receiving unemployment benefits for each week in which he receives a retirement payment that is equal to or exceeds his weekly benefit amount. The claimants monthly pension amount of \$2250.00, allocated weekly, pursuant to LE, §8-1008(c) clearly exceeds his weekly benefit amount.

The issue in this case is whether the pension payment received by the claimant on March 4, 1993, should be allocated retroactively to the month of February, 1993, or only be allocated for the month of March, 1993.

The Board concludes that this pension amount should only be allocated for the month of March, 1993. Statutory terms should be given their ordinary and commonly accepted meaning. Allen v. Core Target City Youth Program, 275 Md. 69 (1975). LE, §8-1008 states that the disqualification applies: "for each week in which. . .an individual. . .receives a retirement payment." [Emphasis added.] The statute does not state "will receive" or "earned." The plain and commonly accepted meaning of "receives" means that the claimant actually has possession of the pension amount.

Since the claimant received the pension on March 4, 1993, the Board concludes that the first week in which the pension is deductible from benefits is the week beginning February 28, 1993. Therefore, the decision of the Hearing Examiner is affirmed.

DECISION

The claimant is receiving periodic retirement payments amounting to more than \$223 per week. This pension disqualifies the claimant from receiving benefits under S8-1008 of the Labor and Employment Article, from the week beginning February 28, 1993 and until this pension is no longer received in an amount greater than \$223 per week, or until Tracer Applied Sciences is no longer a base period employer of this claimant.

The decision of the Hearing Examiner is affirmed.

  
Associate Member

  
Chairman

HW:K

kbm

Date of Hearing: September 21, 1993

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - WHEATON

John T. McGucken - Agency Counsel



# Maryland

## Department of Economic & Employment Development

*William Donald Schaefer, Governor*

*Mark W. Wasserman, Secretary*

*Gary W. Wiedel, Administrator*

*Louis Wm. Steinwedel, Chief Hearing Examiner*

*Room 511*

*1100 North Eutaw Street*

*Baltimore, Maryland 21201*

*Telephone: (410) 333-5040*

### — DECISION —

Mailed: 5/18/93

Date:

9306706

Appeal No:

S. S. No.:

Employer: Tracer Applied Sciences, Inc. 043  
L.O. No.:

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 MD Code, Labor and Employment Article, Title 8, Section 1008.

### — 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 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

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES ON

June 2, 1993

NOTE: APPEALS FILED BY MAIL, INCLUDING SELF-METERED MAIL ARE CONSIDERED FILED ON THE DATE OF THE U.S. POSTAL SERVICE POSTMARK

### — APPEARANCES —

FOR THE CLAIMANT:

Claimant - Present

FOR THE EMPLOYER:

Not Represented

### FINDINGS OF FACT

The claimant established a new claim for unemployment insurance benefits with a benefit year beginning January 10, 1993 and a weekly benefit amount of \$223.

After the claimant's job with Tracer Applied Sciences, Inc. was abolished, the claimant retired. He began receiving a periodic

lump sum pension from Tracer on March 4, 1993. The amount of the claimant's pension is \$2,250.11 per month. The pension was fully funded by Tracer; the claimant made no contributions toward this pension. The claimant worked for Tracer for from July 6, 1965 through January 8, 1993. Consequently, Tracer Applied Sciences, Inc. is clearly a base period employer in this case.

The check that the claimant received on March 4, 1993 covered two months, February and March, 1993. The Wheaton local office disqualified the claimant from receiving benefits with the week beginning February 7, 1993, apparently because the claimant indicated on his claim certification form for that week that he expected to receive a pension payment.

#### CONCLUSIONS OF LAW

The Maryland Code, Labor and Employment Article, Title 8, Section 1008 provides that for each week in which an individual receives a retirement payment, if the weekly amount of the retirement payment is at least equal to the individual's weekly benefit amount, the individual is disqualified from receiving benefits for that week. To compute the weekly amount of a periodic retirement benefit, the periodic payment is prorated on a weekly basis for the period between periodic retirement payments.

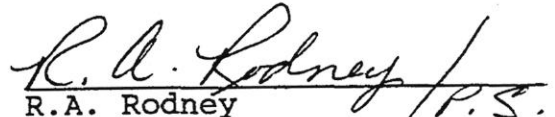
In this case, it is clear that the claimant's monthly pension amount of \$2,250.11, when prorated on a weekly basis, is much greater than his weekly benefit amount of \$223. The key question is whether the payment he received in March, 1993 which covered February and March, 1993 should be applied retroactively to disqualify the claimant from benefits beginning in February, 1993. The Hearing Examiner has located no precedent cases which would be helpful on this point. Accordingly, the decision in this case is based on a reading of the Statute, in particular, Section 1008(C) (2) which indicates that to compute the amount of a periodic retirement benefit, the periodic retirement benefit shall be prorated on a weekly basis for the period between periodic retirement payments. The claimant's first periodic retirement payment was received in the first week of March, 1993. Presumably, he received another payment in April, 1993. Thus, the first period between which periodic retirement payments are to be prorated under the Statute runs from March to April. There was nothing to prorate prior to March. On this basis, I find that the claimant's pension check received in March, 1993 is not to be applied retroactively to February, 1993.

#### DECISION

It is held that the claimant is receiving periodic retirement

payments amounted to more than \$223 per week. This pension disqualifies the claimant under the Maryland Code, Labor and Employment Article, Title 8, Section 1008, from receiving benefits for the week beginning February 28, 1993, and until this pension is no longer received in an amount greater than \$223 per week until Tracer Applied Sciences is no longer a base period employer of this claimant.

The determination of the Claims Examiner is modified.

  
R.A. Rodney  
Hearing Examiner

Date of Hearing: 4/26/93  
ps/Specialist ID: 43738  
Cassette Attached to File  
SEQ 02  
Copies mailed on 5/18/93 to:

Claimant  
Employer  
Unemployment Insurance - Wheaton (MABS)