

DECISION

Claimant:
MARILYN P LYLES

Decision No.: 3311-SE-14

Date: April 15, 2015

Appeal No.: 1409596

Employer:
LEIDOS BIOMEDICAL RESEARCH INC

S.S. No.:

L.O. No.: 64

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/her weekly benefit amount, within the meaning of Maryland Code, Labor and Employment Article, Title 8, Section 1008.

- 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 file the appeal can be found in many public libraries, in the *Maryland Rules of Procedure, Title 7, Chapter 200*.

The period for filing an appeal expires: May 15, 2015

- APPEARANCES -

FOR THE CLAIMANT:
Present

FOR THE EMPLOYER:
Mary Neville, HR Manager

PRELIMINARY STATEMENT

The claimant has filed a timely appeal to the Board from an Unemployment Insurance Lower Appeals Decision issued on August 22, 2014. That Decision held the claimant was disqualified from the receipt of benefit, effective March 1, 2014, due to her receipt of a pension, within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1008*. The decision also stated that only 50% of the claimant's contributory pension should be considered as a reduction in her benefit amount.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board reviews the record *de novo* and may affirm, modify, or reverse the hearing examiner's findings of fact or conclusions of law of the hearing examiner on the basis of evidence submitted to the hearing examiner or evidence that the Board may direct to be taken. *Md. Code Ann., Lab. & Empl. Art., §8-510(d)*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*. Only if there has been clear error, a defect in the record, or a failure of due process will the Board remand the matter for a new hearing or the taking of additional evidence. Under some limited circumstances, the Board may conduct its own hearing, take additional evidence or allow legal argument.

The General Assembly declared that, in its considered judgment, the public good and the general welfare of the citizens of the State required the enactment of the Unemployment Insurance Law, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of individuals unemployed through no fault of their own. *Md. Code Ann., Lab. & Empl. Art., §8-102(c)*. Unemployment compensation laws are to be read liberally in favor of eligibility, and disqualification provisions are to be strictly construed. *Sinai Hosp. of Baltimore v. Dept. of Empl. & Training, 309 Md. 28 (1987)*.

To address and resolve the inconsistency in the hearing examiner's decision, the Board ordered that a hearing should be held before a Special Examiner. A telephone hearing was scheduled for December 2, 2014, at 10:00 a.m., at which both the claimant and the employer appeared.

FINDING OF FACTS

The claimant's long-term employment ended as of January 17, 2014, when the employer executed a reduction in its labor force. Prior to this, the employer arranged for affected employees to meet with a representative from the Maryland Department of Labor, Licensing, and Regulation so that they would understand their rights and responsibilities under the unemployment insurance law.

The claimant and others were properly advised that they would be eligible for benefits during an interim period prior to the employer processing pension payments for those eligible employees. They were instructed to continue to file claims and advise the Agency when they began receiving their respective pensions. The claimant received her first pension payment on March 19, 2014, for the month of March, and immediately notified the Agency.

The claimant's gross monthly pension amount of \$1,965.32 was based upon contributions from the employer and from the claimant. She continues to receive this amount each month. Allocated over 52 weeks, the claimant receives a pension in the amount of \$453 per week.

Because the claimant received her first monthly payment so late in March, she had already received unemployment insurance benefits for the weeks beginning March 2, 9, and 16, 2014. The claimant was then found to have been overpaid benefits for these three weeks and held responsible for repayment of \$1,290.

Md. Code Ann., Lab. & Empl. Art., §8-1008(a), defines "retirement payment":

- (1) 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 any 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
- (2) does not include a payment from a state or federal workers' compensation program.

Md. Code Ann., Lab. & Empl. Art., §8-1008(b) provides:

- (1) For each week in which the Secretary finds that an individual who otherwise is eligible for benefits receives a retirement payment:
 - (i) If the weekly amount of the retirement payment, computed under subsection (c) of this section at least equals the individual's weekly benefit amount, the individual is disqualified from receiving benefits for that week; and
 - (ii) if the weekly amount of the retirement payment computed under subsection (c) of this section is less than the individual's weekly benefit amount, the individual may receive benefits reduced by the amount of the retirement payment. [emphasis added]

Md. Code Ann., Lab. & Empl. Art., §8-1008(c), further provides:

- (1) To determine the effect of a retirement payment on eligibility for benefits under subsection (b) of this section:
 - (i) if a base period employer paid the full cost of the plan that provides the retirement, the full retirement payment shall be considered; and
 - (ii) if a base period employer paid only part of the cost of the plan that provides the retirement payment, 50% of the retirement payment shall be considered. [emphasis added]
- (2) To compute the weekly amount of a periodic retirement payment, it shall be prorated on a weekly basis for the period between periodic retirement payments...

Read collectively, *Md. Code Ann., Lab. & Empl. Art., §101 (c) and (b)*, define "base period employer" as "any employing unit who paid wages to an individual during the first 4 of the last 5 completed calendar quarters immediately preceding the start of the benefit year."

COMAR 09.32.02.14 provides in pertinent part:

A. Definitions.

- (1) "Contributory pension" means a plan under which an employing unit pays or has paid some, but not all, of the premiums or contributions, and the claimant has paid some, but not all, of the premiums or contributions.

* * *

(4) "Pension payment" means the gross amount payable to a claimant from a pension plan or system which is based on the previously insured work of that claimant. Payment from a plan to a claimant who did not perform the work, for example, spouse, child, or parent, is not a pension payment.

(5) "Periodic pension payment" means the gross amount payable on a recurring basis.

B. Deductible Pension Payments.

(1) Pension payments shall be deducted from benefits if the payments are made under a plan contributed to by a base period employer.

(2) Deductible pension payments include but are not limited to: ...

(e) Private employer pensions;

* * *

D. Method of Deduction.

* * *

(2) Calculation. Deductible pension payments shall be deducted from benefits payable to the claimant as follows:

* * *

(b) 50 percent of each contributory pension payment paid by or originating from a base period employer shall be deducted from basic weekly benefit amounts payable throughout the claimant's benefit year;

(c) A periodic contributory or noncontributory pension payment prorated by week shall be deducted from the claimant's basic weekly benefit amount beginning with the first week in which the effective date of the pension falls and for which the claimant has filed a continued claim.

* * *

(4) Duration of Benefit Payments. Benefits reduced as a result of a pension deduction are payable until the maximum benefit amount is exhausted for the claimant's benefit year, provided all of the eligibility requirements of the Unemployment Insurance Law are met.

EVALUATION OF EVIDENCE

In her appeal to the hearing examiner's prior decision, the claimant contended she did exactly as instructed by the Agency representative. She disputed the finding that her ineligibility became effective March 1, 2014, because she did not receive the first payment until March 19, 2014. She contended she was assured she would not be penalized if she received unemployment benefits during the pendency of her receipt of pension payments.

The Board agrees with the claimant's contention that she did precisely as she was instructed to do. The claimant did notify the Agency immediately upon receipt of her first pension payment. At that time her unemployment benefits were ceased. The claimant is incorrect, however, that the effective date should have been the date upon which she received this first payment. The pension payment was for the entire month of March 2014, and properly was allocated back to March 1, 2014. The fact that she did not receive this payment until later does not change its effective date. As of March 1, 2014, the claimant's weekly benefit amount should have been reduced by one-half of her pension payment.

The claimant's pension is contributory. Only one-half of the pension payment should be used to reduce her weekly benefit amount. Pro-rated over 52 weeks, the claimant receives a pension in the amount of \$453; one-half of this is \$226.50. This is less than the claimant's weekly benefit amount of \$430. She is entitled to her weekly benefit amount, reduced by the deductible amount of her pension (\$227), or \$203 per week so long as she is otherwise qualified and eligible.

The claimant believed she had been told that the Agency would not consider benefits received during the pendency of pension payments as overpayments. She asserted the Agency representative stated this during the informational meeting. This is unlikely as it is contrary to the law. Any benefits received by any claimant when that claimant is not entitled to those benefits, are overpayments. The Agency is required to attempt to recover all overpayments.

The claimant testified that the Agency representative stated there would be no penalty for payments received during this interim period. A penalty, in this context, would be a finding of fraudulent receipt of benefits, the assessment of interest or penalties, and a twelve-month disqualification from benefits. Recoupment of an overpayment is not a penalty imposed by the Agency.

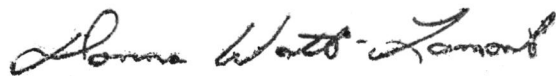
The claimant received the full \$430 for the first three weeks of March. She should have received \$203 for each of those weeks, and for any subsequent weeks during which she filed claims for benefits. The claimant's receipt of benefits in excess of the amount to which she was entitled, created an overpayment which the Agency is obligation to recover.

The Board finds, based upon a preponderance of the credible evidence, that the claimant is receiving a contributory pension payment within the meaning of *Md. Code Ann., Lab. & Empl. Art., §8-1008*. One-half of the claimant's pension payment is deductible from her weekly benefit amount. The decision shall be reversed for the reasons stated herein and in the hearing examiner's decision.

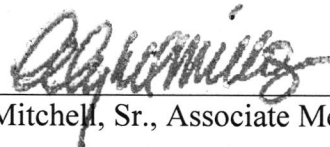
DECISION

The Board holds that the claimant is in receipt of a contributory pension payment from a base-period employer, pursuant to *Maryland Code Ann., Labor and Emp. Article, §8-1008*. The claimant is entitled to benefits in the amount of \$203.00, from the week beginning March 2, 2014, so long as the claimant is otherwise qualified and eligible.

The Hearing Examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

KP/MW

Date of hearing: December 02, 2014

Copies mailed to:

MARILYN P. LYLES

LEIDOS BIOMEDICAL RESEARCH INC

SUSAN BASS DLLR

S A I C FREDERICK

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

MARILYN P LYLES

SSN #

Claimant

vs.

LEIDOS BIOMEDICAL RESEARCH INC

Employer/Agency

Before the:

**Maryland Department of Labor,
Licensing and Regulation**

Division of Appeals

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 767-2421

Appeal Number: 1409596

Appellant: Claimant

Local Office : 64 / BALTOMETRO
CALL CENTER

August 22, 2014

For the Claimant: PRESENT

For the Employer: PRESENT , DARLENE ROSE MARINO

For the Agency:

ISSUE(S)

Whether the claimant's receipt of a pension based on wages from a base period employer is disqualifying within the meaning of MD Code Annotated, Labor and Employment Article, Title 8, Section 1008.

PREAMBLE

This case was remanded by the Board of Appeals for a new decision based upon the existing record to include succinct findings of fact in support of the conclusions of law, and a well-explained evaluation of the evidence in reaching the decision.

FINDINGS OF FACT

The Claimant (Marilyn Lyles) filed for unemployment insurance benefits establishing a benefit year effective January 26, 2014 with a weekly benefit amount of \$430.00.

The Claimant began working for this Employer (Leidos Biomedical Research, Inc.) on March 8, 1982. At the time of separation, the Claimant was working as an Administrative Assistant for which the Claimant was paid for full time work. The Claimant last worked for the Employer on January 17, 2014, before being separated from her employment as a result of the Employer's reduction in staff.

The Claimant began receiving a contributory pension from this Employer with an effective date of March 1, 2014, for which the Claimant receives \$1,965.32 per month for each month for the rest of her life.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1008 and COMAR 09.32.02.14 provide, in essence, that an individual may be disqualified from receiving benefits for each week in which the Secretary determines that the individual, who otherwise is eligible for benefits, receives a retirement payment, if the weekly amount of the retirement payment at least equals the individual's weekly benefit amount.

As provided in Section 8-1008, "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 any other similar lump sum or periodic payment that is based on any previous covered employment for a base period employer, and does not include a payment from a state or federal workers' compensation program.

Section 8-1008 further provides a formula to compute the effect of a retirement payment on eligibility for benefits, which states that: (1) if a base period employer paid the full cost of the plan that provides the retirement, the full retirement payment shall be considered; and (2) if a base period employer paid only part of the cost of the plan that provides the retirement payment, 50% of the retirement payment shall be considered.

In addition, Section 8-1008 requires that to compute the weekly amount of a periodic retirement payment, it shall be prorated on a weekly basis for the period between periodic retirement payments. To compute the weekly amount of a lump sum retirement payment, it shall be allocated to the number of weeks that follow the date of separation from employment in accordance with the number of weeks of pay that an individual received at the individual's last wage rate.

EVALUATION OF EVIDENCE

A claimant who receives a pension is ineligible for (or the extent that) benefits if it is established by a preponderance of the evidence that the pension payments meet the requirements as set forth in Section 8-1008 above.

Effective with the month beginning March 1, 2014, the Claimant began receiving contributory monthly pension in the sum of \$1,965.32 per month for the rest of her life.

The Claimant receives a contributory pension. The language of Md. Code Ann., Labor & Emp. Article, Section 8-1008, holds that because a base period employer paid only part of the cost of the plan that provides the retirement payment, fifty percent (50%) of the Claimant's pension shall be considered in determining the amount to be deducted from her unemployment weekly benefit amount. In the instant case,

fifty percent (50%) of the Claimant's monthly pension amount of \$1,965.32 will be allocated over the number of weeks that followed from the date that the Claimant separated from her base period employer.

Consequently, an unemployment disqualification shall be imposed based upon her separation from this employment.

DECISION

IT IS HELD, that the Claimant is in receipt of a retirement payment that effectively disqualifies the Claimant from receiving benefits within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1008 and COMAR 09.32.02.14. Benefits are denied for the week beginning March 1, 2014 and until the receipt retirement pay is no longer a bar to benefits. The Claimant will then be eligible for benefits so long as all other eligibility requirements are met. The Claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at ui@dllr.state.md.us or call 410-949-0022 from the Baltimore region, or 1-800-827-4839 from outside the Baltimore area. Deaf Claimants with TTY may contact Client Information Service at 410-767-2727, or outside the Baltimore area at 1-800-827-4400.

The determination of the Claims Specialist is affirmed.

L. Williamson, Esq.

L. Williamson, Esq.
Hearing Examiner

Notice of Right to Request Waiver of Overpayment

The Department of Labor, Licensing and Regulation may seek recovery of any overpayment received by the Claimant. Pursuant to Section 8-809 of the Labor and Employment Article of the Annotated Code of Maryland, and Code of Maryland Regulations 09.32.07.01 through 09.32.07.09, the Claimant has a right to request a waiver of recovery of this overpayment. This request may be made by contacting Overpayment Recoveries Unit at 410-767-2404. If this request is made, the Claimant is entitled to a hearing on this issue.

A request for waiver of recovery of overpayment does not act as an appeal of this decision.

Esto es un documento legal importante que decide si usted recibirá los beneficios del seguro del desempleo. Si usted disiente de lo que fue decidido, usted tiene un tiempo limitado a apelar esta decisión. Si usted no entiende cómo apelar, usted puede contactar (301) 313-8000 para una explicación.

Notice of Right of Further Appeal

This is a final decision of the Lower Appeals Division. Any party who disagrees with this decision may request a further appeal either in person, by facsimile or by mail with the Board of Appeals. Under COMAR 09.32.06.01A(1) appeals may not be filed by e-mail. Your appeal must be filed by September 08, 2014. You may file your request for further appeal in person at or by mail to the following address:

Board of Appeals
1100 North Eutaw Street
Room 515
Baltimore, Maryland 21201
Fax 410-767-2787
Phone 410-767-2781

NOTE: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing : April 30,2014
TH/Specialist ID: RBA2E
Seq No: 001
Copies mailed on August 22, 2014 to:

MARILYN P. LYLES
LEIDOS BIOMEDICAL RESEARCH INC
LOCAL OFFICE #64
SUSAN BASS DLLR
S A I C FREDERICK