

**- DECISION -**

Claimant:  
VITO A FAVAROLA JR

Decision No.: 3591-BR-12

Date: July 30, 2012

Appeal No.: 1212979

S.S. No.: 212-52-1654

Employer:  
HARMON INC

L.O. No.: 63

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.

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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 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: August 29, 2012

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**REVIEW OF THE RECORD**

After a review of the record, the Board adopts the following findings of fact and reverses the hearing examiner's decision.

The claimant was employed for this employer from April 24, 2007 through August 27, 2009.

The claimant has received a pension since 2005 from the Iron Workers Local No. 16 Pension Fund. The pension was not attributable to a base period employer and not attributable to the employer in the instant case.

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)*.

The Board reviews the record *de novo* and may affirm, modify, or reverse the 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, or may remand any case to a hearing examiner for purposes it may direct. *Md. Code Ann., Lab. & Empl. Art., § 8-510(d); COMAR 09.32.06.04*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.02(E)*.

*Md. Code Ann., Lab. & Empl. Art., Section 8-1008* provides

(a) "Retirement payment" defined. -- In this section, "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.

(b) Effect of payment. --

(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.

(2) A retirement benefit in the form of a lump sum payment is not deductible from benefits for the period of eligibility if:

(i) the employing unit pays the lump sum payment as a result of a layoff or shutdown;  
or

(ii) within 30 days of receiving the lump sum payment, the claimant:

1. places the lump sum payment in a qualified retirement plan; and

2. provides proof to the Secretary that the lump sum payment has been placed in a qualified retirement plan.

(3) In the case of payment in the form of a pension, annuity, retirement, or retired pay paid to an individual under the Social Security Act or the Railroad Retirement Act of 1974, the individual's contribution shall be taken into consideration and the weekly benefit amount shall not be reduced.

(c) Computation. --

(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.

(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.

(3) 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.

(d) Notice of lump sum payment. -- Prior to distributing a retirement benefit in the form of a lump sum to any former employee, an employer shall provide written notice to the former employee of the effect of the lump sum distribution on the weekly benefit amount under this section if the employee subsequently files a claim for unemployment insurance benefits.

The employer and the Agency, duly notified of the date, time and place of the hearing, failed to appear.

The claimant's testimony and evidence is credible and uncontradicted. The claimant credibly testified that he has received a pension from the Iron Workers Local No. 16 Pension Fund since 2005 and that Harmon, Inc. (his employer since 2007) did not contribute to this pension. There is insufficient evidence that the claimant was in receipt of a pension from a base period employer. The hearing examiner's finding that the claimant was employed by Harmon since 2004 is not supported by sufficient evidence. Therefore, the claimant's pension is not disqualifying within the meaning of *Section 8-1008*.

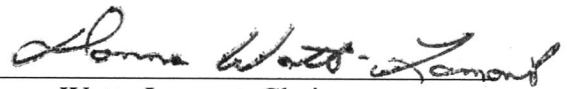
### DECISION

THE BOARD HOLDS that the claimant is not in receipt of a disqualifying retirement payment within the meaning of *Md. Code Ann., Lab. & Empl. Art., Section 8-1008*. There is no disqualification based on this section of the law and the claimant is allowed benefits for the week beginning August 30, 2009 provided he meets the other requirements of the law.

The hearing examiner's decision is reversed.



Clayton A. Mitchell, Sr., Associate Member



Donna Watts-Lamont, Chairperson

RD

Copies mailed to:

VITO A. FAVAROLA JR

HARMON INC

SUSAN BASS DLLR

ANDREAS LUNDSTEDT ESQ

Susan Bass, Office of the Assistant Secretary

**UNEMPLOYMENT INSURANCE APPEALS DECISION**

VITO A FAVAROLA JR

SSN #

**Claimant**

vs.

HARMON 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: 1212979

Appellant: Claimant

Local Office : 63 / CUMBERLAND  
CLAIM CENTER

May 03, 2012

**For the Claimant:** PRESENT, ANDREAS LUNDSTEDT ESQ

**For the Employer:**

**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.

**FINDINGS OF FACT**

The claimant began working for this employer on or about April 24, 2004. At the time of separation, the claimant was working as a journeyman ironworker for which the claimant was paid \$25.00 per hour for his full time work. The claimant last worked for the employer on or about August 27, 2009, before voluntarily retiring.

The claimant began receiving a non-contributory pension from this employer on or about September 1, 2009, for which the claimant receives \$2,343.25 each month. The claimant eventually opened his unemployment claim on or about August 23, 2009. The claimant qualified for a weekly benefit amount of \$380.

## 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

The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the Facts on the credible evidence as determined by the Hearing Examiner.

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. In the case at bar, this burden has been met.

This pension was paid by the Ironworker's union, local 16. However, the money for this pension was paid directly by the employers who hired the union workers. Section 8-1008 includes any periodic payment that is based on any previously covered employment for a base period employer under a plan that is paid wholly or partial by a base period employer. That is clearly the case here. The claimant is receiving a union pension that was paid for by his base period employer. The claimant did not contribute to this pension so the full amount of the pension will be considered. The claimant is in receipt of \$2,343.25 each month. If that is divided by 4.3, the number of weeks in a given month, then he receives \$544 each week.

That being the case, it is found that the pension payments exceed the meaning of the sections of law cited above.

Consequently, an unemployment disqualification shall be imposed based upon his 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 August 30, 2009 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](mailto: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 modified

*S Weber*

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S Weber, 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**

Any party 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 May 18, 2012. 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 26, 2012  
DW/Specialist ID: WCU1E  
Seq No: 001  
Copies mailed on May 03, 2012 to:  
VITO A. FAVAROLA JR  
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LOCAL OFFICE #63  
SUSAN BASS DLLR  
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