



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*

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

— DECISION —

| | | | |
|-----------|--|-----------------|----------|
| | Decision No.: | 1405-BH-92 | |
| | Date: | August 18, 1992 | |
| Claimant: | Marvin Yaker | Appeal No.: | 9117977 |
| | | S. S. No.: | |
| Employer: | Dept. Housing & Comm. Dev. | L. O. No.: | 1 |
| | | Appellant: | EMPLOYER |
| 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 ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAYBE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE CIRCUIT COURT OF BALTIMORE CITY, IF YOU RESIDE IN BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES

September 17, 1992

— APPEARANCES —

FOR THE CLAIMANT:

Marvin Yaker - Claimant

FOR THE EMPLOYER:

George Gentry -
Personnel Technician
IV

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 was employed by the City of Baltimore for 39 years. For 29 of these years, he was a contributor to a pension system. He paid into the system until the end of March, 1991; at the end of this period of time, the claimant was paying in approximately \$80.00 on a hi-weekly basis into this pension system. The employer also contributed to this pension system. The claimant filed an application in January of 1991 to cash out of this pension system. On April 2, 1991, he received \$49,822.32 back from this contributory pension system. At the same time, the claimant was converted to the City's non-contributory pension system. "Non-contributory" means, in this context, a system in which the employee does not contribute any money towards the pension system. The claimant then worked until June 28, 1991. Beginning with the first week of July, 1991, the claimant received a pension check from this non-contributory pension system in the amount of \$661.76 hi-weekly.

The claimant applied for unemployment insurance benefits. His base year (the year in which he must establish earnings in order to be eligible for unemployment insurance benefits) was April 1, 1990 through March 31, 1991. Assuming that the claimant was eligible under all other provisions of the law, and assuming that no deductions were applicable, his weekly benefit amount, based on his base year of earnings, is \$223.00.

CONCLUSIONS OF LAW

The issue in this case is whether the hi-weekly payment of \$661.76 was the result of a contributory or non-contributory pension. If it was a non-contributory pension, the entire amount would be deducted from benefits under Section 8-1008(C) (i). If it is a contributory pension, only 50% of the amount should be deducted from benefits under Section 8-1008(C) (ii).¹

¹ This decision will not reach the issue of whether the claimant's receipt of a lump sum amount of \$49,822.32 on April 2, 1991 is also the receipt of a disqualifying retirement payment within the meaning of Section 8-1008. This issue itself is clouded by two facts: first, the claimant received this money well before he actually retired; second, it appears possible that

The claimant argues that his base year ended on March 31, 1991 and that, during that period of time, he was contributing to the pension system. For this reason, he argues, the pension issue should be decided based only upon the pension facts which were in effect during that base period. In other words, since the claimant was contributing to the employer's pension system during each and every day of his base year, April 1, 1990 through March 31, 1991, his pension deduction should be judged based upon only what was happening during that base year.

Although this is an intriguing argument, it has no basis in the statute. In Section 8-1008 "retirement payment" is defined as:

. . . a pension . . . 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

The \$661.76 payments received by the claimant clearly meet this criterion.

In order to determine whether 50% or 100% of the retirement payment should be deducted from unemployment insurance benefits, Section 8-1008(C) must be consulted. Under subparagraph (i), the full retirement payment should be deducted "if a base period employer paid the full cost of the plan that provides the retirement."

The crucial question in this case is not what happened during the base period. The crucial questions are (1) which plan provides the retirement payment; and (2) did a base period employer pay the full cost of this plan.

In this case, the Department of Housing and Community Development is clearly a base period employer. All of the claimant's earnings during his base year were paid by the Dept. of Housing and Community Development. Once that department is identified as a base period employer, the details of what happened during the base period are irrelevant. The next question is which plan is providing the retirement payment. Clearly, the plan into which the claimant switched on April 2, of 1991 is the plan which is providing the \$661.76 hi-weekly retirement checks. And, it is uncontested that the employer paid the full cost of this particular plan. Since the Department of Housing and Community Development was the claimant's base period employer and since

the lump sum amount actually represented a return of his own contributions with interest. Because of the Board's resolution of the other issue, however, the Board will not have to reach this issue.

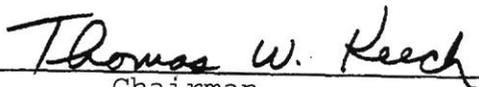
it paid the full cost of the plan that provides the claimant's retirement checks of \$661.76 hi-weekly, the full amount of this check must be deducted from unemployment insurance benefits under Section 8-1008(c)(i). For this reason, the decision of the Hearing Examiner must be reversed.

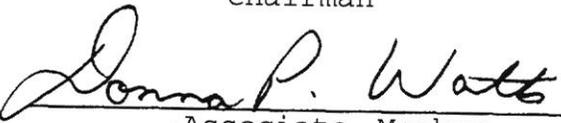
The claimant's hi-weekly check of \$661.76 should thus be deducted at a rate of \$330.88 per week. Section 8-1008(C) (2). Since this amount is greater than the claimant's weekly benefit amount of \$223 a week, the claimant is totally disqualified from receiving unemployment insurance benefits based upon his work for this employer. Section 8-1008(C) (i). He shall remain disqualified as long as he receives a pension in this amount or until the Department of Housing and Community Development is no longer a base period employer.

DECISION

The claimant is in receipt of a pension from a non-contributory pension plan paid for in full by a base period employer. The pension amount received is greater than his weekly benefit amount. He is disqualified from receiving benefits under Section 8-1008(b) (i) for as long as he receives his pension in this amount or until the Department of Housing and Community Development is no longer a base period employer.

The decision of the Hearing Examiner is reversed.


Chairman


Associate Member


Associate Member

kmb

DATE OF HEARING: May 5, 1992

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

William R. Merriman, Chief Hearing Examiner
Louis Wm. Steinwedel, Deputy Hearing Examiner

1100 North Eutaw Street
Baltimore, Maryland 21201

Telephone: 333-5040

CORRECTION
— DECISION —

Claimant: Marvin Yaker Date: Mailed: 11/19/91
Appeal No.: 9117977
S. S. No.:
Employer: Dept. Housing & Commun. Development LO. No.: 1
Appellant: Employer

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 MD Code, Labor and Employment Article, 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 APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL

12/4/91

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON

— APPEARANCES —

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

Shirely L. Norris
Personnel Technician
II

FINDINGS OF FACT

The claimant was employed from November 1, 1965 through June 28, 1991, as a housing rehabilitation supervisor for the Department of Housing and Community Development for the City of Baltimore. The claimant's last salary was \$43,300 per year.

On June 28, 1991, through no fault of his own the claimant was laid off due to a lack of funding. (See Claimant's Exhibit No. 1) Until April 15, 1991, the claimant was in a contributory pension plan with the City of Baltimore. On April 15, 1991, the claimant made a lump sum withdrawal of monies in his pension plan in the amount of \$49,494.18, and thereafter, on April 15, 1991, he was in a non-contributory pension plan. The claimant is now receiving \$1323.52 per month under his contributory pension plan.

CONCLUSIONS OF LAW

Under the Maryland Code, Labor and Employment Article, Title 8, Section 100 when a claimant receives contributory pension payments from a base period employer, equal to an amount less than the claimant's weekly benefit amount, the claimant will be eligible for reduced benefits.

DECISION

The benefit determination of the Claims Examiner is herewith modified.

It is held that the claimant has received pension or other similar periodic payments amounting to \$153 per week. This amount is to be deducted from the claimant's weekly benefit amount of \$223 according to the MD Code, Labor and Employment Article, Title 8, Section 1008(c) [ii]. Therefore, the claimant is eligible for reduced benefits in the amount of \$70 per week. This reduction in benefits is effective June 28, 1991, and extends until this pension is no longer received in this amount or until the City of Baltimore is no longer a base period employer of the claimant.

Raymond E. Frederick
Raymond E. Frederick (sk)
Hearing Examiner

Date of hearing: 11/4/91
ah/cassette: 11169a
Specialist ID: 01077
Mailed copies on 11/19/91 to:

Claimant
Employer
Unemployment Insurance - Baltimore MABS