

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
Mark L Wasserman, Secretary

Board of Appeals
1100 North Eutaw Street
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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

¹This 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