



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.:	586-BH-93
	Date:	April 2, 1993
Claimant:	Alonzo Williams Henry Cogdell Charles Facello	Appeal No.: 9223677, 9223365 & 9225757
	S. S. No.:	
Employer:	Bethlehem Steel Corp.	L. O. No.: 1 & 40
	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 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 MAY BE 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

May 2, 1993

— APPEARANCES —

FOR THE CLAIMANT:
Charles Facello - Claimant
Alonzo Williams - Claimant
Henry Cogdell - Claimant
Timothy Hogan - Attorney
Thomas Minkin - Attorney

FOR THE EMPLOYER:

Stewart Webb -
Attorney
Steve Burkhardt -
Attorney
William Wheeler -
Coordinator
Tom Irish

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 claimants were employed by Bethlehem Steel Corporation in the Sparrows Point Rod Mill until the mill closed in August, 1992. All three were hourly employees who had worked there for many years. As a result of the mill closing, the claimants were given several options:

(1) They could retire and collect a pension, under the terms of the collective bargaining agreement;

(2) They could be laid off until a permanent job became available (job openings were posted in the plant); or

(3) They could bid on lower paying labor jobs in the labor pool, where their seniority might allow them to "bump" a junior employee out of a job.

All three claimants elected to take the retirement option. Their retirements were effective September 1, 1992.

Under the terms of the Pension Agreement between the employer and the United Steel Workers of America, upon retirement, the claimants became eligible for a retirement pension. This pension consists of:

(a) a special initial pension amount (hereinafter 'special payment'),... and (b) a regular pension amount (hereinafter 'regular pension'), payable in monthly installments. See, Claimant and Employer Exhibit B-5.

The regular pension is non-contributory and is paid in monthly installments. The claimants began receiving this portion of the pension on or about December 1, 1992. The claimants received the following monthly pension amounts:

Cogdell: \$1246.27 monthly (=\$287.60 weekly)
Facello: \$1553.16 monthly (=\$358.42 weekly)
Williams: \$1419.31 monthly (=\$327.53 weekly).

The special payment portion of the pension is calculated based on a formula set out in the pension agreement. Basically it is made up of any vacation pay still owed to the employee at the time he retires, plus nine weeks of his weekly base salary. The claimants are given this special payment within the first month of retirement.

The claimants received the following special payments:

Cogdell: \$9481.08, four weeks of which was vacation pay.
Facello: \$7662.27, three weeks of which was vacation pay.
Williams: \$7595.19, three weeks of which was vacation pay.

All the money for these payments, including the vacation pay, is paid out of a pension trust. The special payment is specifically designed to cover the first three months of retirement, until the regular monthly pension begins. This was a thirteen week period, from September 1, 1992 until December 1, 1992.

CONCLUSIONS OF LAW

There are several issues that must be addressed in this decision. The first issue is whether the claimants voluntarily quit their jobs, within the meaning of §8-1001 of the Labor and Employment Article. The Board concludes that they did not.

The claimants lost their jobs due to the closing of the rod mill. They were laid off for lack of work. The employer argues that because they did not have to retire, but could have bid on other jobs at Bethlehem Steel, their decision to retire is a voluntary quit. The Board disagrees.

In the case of Taylor v. A. Samuel Kurland t/a Speedway Launderette, 563-BH-84, the Board held that where an employee is laid off due to the closing of the establishment in which he worked, and then refuses to apply for work at another similar establishment owned by the employer, the refusal is not a voluntary quit as contemplated by the statute.¹ See also, Conroy, et al. v. Alto Gravure, 436-BH-86. In that case, the employer made a decision to lay off a specific number of employees, but allowed the employees themselves (through their union) to decide which employees would lose their jobs. Some of the more senior employees, who could have remained employed if the layoffs were done on the basis of seniority, chose instead to take the layoff and allow more junior employees to continue working. The Board held that, where an employer had already decided to lay off a certain number of workers, the fact that the employees chose who would be laid off did not transform the separations into voluntary quits, even for those employees with seniority.

The same reasoning applies in this case. These claimants were

¹That case also raised the issue of refusal to apply for suitable work. That issue was not raised here and the Board does not find sufficient evidence to raise it in this decision.

laid off, for purposes of the Unemployment Insurance Law.

The next issue that the Board must address is whether the pensions received by the claimants are deductible from benefits, within the meaning of §8-1008 of the Labor and Employment Article.

It is essentially undisputed that the second part of the pension, the "regular pension amount," is a periodic payment based on previous covered employment for a base period employer under a plan paid for wholly by a base period employer, and therefore is deductible from unemployment insurance benefits, under §8-1008. Since the weekly amount of that monthly pension exceeds the weekly benefit amount for all three claimants, they are all disqualified from unemployment benefits from the week beginning November 29, 1992 and until they no longer receive the pension from a base period employer.

The more difficult issue is whether the special payment is deductible from benefits. §8-1008(b)(2) provides that:

A retirement benefit in the form of a lump sum payment that an employing unit pays as a result of a layoff or shutdown shall not be deductible from benefits for the period of eligibility.

The Board has already held that the claimants were laid off. Therefore, the special payment does meet that part of the requirement. However, the Board finds that the special payment is not a lump sum payment, but is in fact, the first payment of a periodically paid pension. Therefore, this exception does not apply.

The Board recognizes that its earlier rulings on this issue are no longer dispositive. See, e.g., Mahla, Jr. v. Bethlehem Steel Corp., 916-BR-85; Humphrey v. Bethlehem Steel, 285-BR-85. Both the law and the regulations have changed since those decisions were issued. First, §8-1008(b)(2) did not exist at the time those decisions were made. Therefore, the question of whether or not the special payment was a lump sum was not a crucial issue. Second, COMAR 24.02.02.14 A was subsequently added to the regulations interpreting the statute. That regulation defines lump-sum pension to mean:

the gross amount of a pension that is paid in one payment. Any pension paid in more than one payment is not a lump-sum pension, even if the installments are paid irregularly. [Emphasis added.]

In considering the description of the pension in the Pension Agreement (Exhibit B-5), in light of this regulation, the Board concludes that the special payment is not a separate lump sum pension payment, but is the first installment of a

periodic pension. Therefore, the exception for lump sum payments in §8-1008(b)(2) is not applicable.

The remaining issue to be decided is whether the entire special payment is a pension, and therefore deductible from benefits, or whether a portion of it is vacation pay and therefore not deductible, under §8-1007. The Board concludes that the vacation pay portions of the special payments are not payments of pensions and are not deductible from unemployment benefits.

The Board held in Mahla, supra, and in Donald St. Clair v. Bethlehem Steel Corp., 671-BR-85, that accrued vacation pay is not deductible from benefits, even ~~whampdn~~ with a special retirement pay. The Board finds no reason to change that ruling here. The fact that the money for these payments came from a pension trust does not alter the fact that for each claimant a portion of the special payment included vacation pay that was earned, and owed by the employer to the claimant, regardless of any pension paid at the same time.

In making this deduction, however, the Board will not follow the deduction method used in Mahla and St. Clair, because COMAR 24.02.02.14 A now requires the Board to treat this pension as a periodic pension. Periodic pensions are assigned pro rata to the weeks between the periodic payments. In this case, the first periodic payment of pension will be considered to have occurred on the day following the exhaustion of that part of the payment which represents vacation pay.

The Board finds that, for claimants Facello and Williams, the first three weeks of the special payment was vacation pay and therefore is not deductible from unemployment benefits; for claimant Cogdell, there is no deduction for the first four weeks.

Finally, under §8-1008(c)(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." Therefore, the retirement portion of the special payment, which the Board deems to have been paid beginning with the first week after the exhaustion of the vacation pay for each claimant, should be prorated for the weeks between that date and the date that the regular pension began.

For each claimant, the results are as follows:

Cogdell: He received vacation pay from the week beginning August 30, 1992, until the week ending September 26, 1992. The special payment, prorated on a weekly basis, is \$729.31. That amount is deductible from benefits, beginning with the week beginning September, 27, 1992.

Facello: He received vacation pay from the week beginning

August 30, 1992, until the week ending September 19, 1992. The special payment, prorated on a weekly basis, is \$589.41. That amount is deductible from benefits, beginning with the week beginning September 20, 1992.

Williams: He received vacation pay from the week beginning August 30, 1992, until the week ending September 19, 1992. The special payment, prorated on a weekly basis, is \$584.25. That amount is deductible from benefits, beginning with the week beginning September 20, 1992.

DECISION

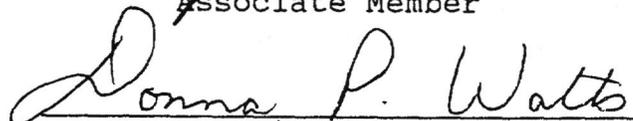
The claimant, Henry Cogdell received a pension in excess of his weekly benefit amount. The claimant's unemployment insurance benefits will be denied from the week beginning September 27, 1992, and until Bethlehem Steel is no longer a base period employer of this claimant.

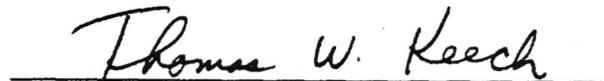
The decision of the Hearing Examiner in case number 9223365 is affirmed.

The claimants, Alonzo Williams and Charles Facello received a pension in excess of their weekly benefit amount. The claimants' unemployment insurance benefits will be denied from the week beginning September 20, 1992, and until Bethlehem Steel is no longer a base period employer of these claimants.

The decisions of the Hearing Examiner, in cases number 9223677 and 9225757 are modified.


Associate Member


Associate Member


Chairman

kmb

DATE OF HEARING: March 16, 1993

COPIES MAILED TO:

CLAIMANT

EMPLOYER

Eddie Bartee, Union Rep.
Local 2609 USWA
550 Dundalk Ave.
Baltimore, MD 21224

Thomas Minkin, Esquire
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G. Stewart Webb, Jr.
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Baltimore, MD 21201

UNEMPLOYMENT INSURANCE - BALTIMORE & EASTPOINT



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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Telephone: (410) 333-5032*

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

— DECISION —

Decision No.:	153-BR-93
Date:	January 29, 1993
Claimant: <u>Alonzo Williams</u>	Appeal No.: 9223677
	S. S. No.:
Employer: <u>Bethlehem Steel Corp.</u>	L. O. No.: 001
	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 ~8-1008 of the Labor and Employment Article.

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THE PERIOD FOR FILING AN APPEAL EXPIRES

February 28, 1993

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals modifies the decision of the Hearing Examiner.

The claimant, who had been employed by Bethlehem Steel for 37 years, was laid off on August 15, 1992. His job as a checker in the rod mill was abolished, and the rod mill was permanently shut down. At that time he was given four options, three of which involved the possibility of bidding on other jobs. The fourth option, which the claimant chose, was to retire.

The claimant officially retired effective September 1, 1992. In accord with the union contract, certain benefits became available to him. Effective December 1, 1992, the claimant became eligible for a monthly pension of \$1419.51. This is a non-contributory pension. Therefore it is totally deductible from unemployment benefits, beginning the week beginning November 29, 1992, at a rate of \$328.00 per week.

Another benefit of selecting the retirement option was the receipt of a special retirement pay. This was paid to the claimant in a lump sum of \$7595.19, which represented nine weeks of special pay and any unused vacation pay that the claimant had accumulated. This lump sum was paid to the claimant on September 30, 1992 but was specifically paid to cover the first three months of his retirement, that is, the period from September 1, 1992 up to December 1, 1992.

The Hearing Examiner found that this entire amount was deductible from unemployment benefits. However, the Board disagrees. The employer testified that although the lump sum covered a thirteen-week period (the period between September 1, 1992 and December 1, 1992 is thirteen weeks), only nine weeks' worth of this lump sum was special retirement pay, the remainder being unused vacation pay that the claimant had earned. Therefore, the Board concludes that four weeks' worth of this payment represents vacation pay. Accrued vacation pay is not deductible from benefits, even when "lumped" in with a special retirement pay. Donald St. Clair v. Bethlehem Steel Corp., 671-BR-85; see also, Mahla, Jr. v. Bethlehem Steel Corp., 916-BR-85. Since the employer did not provide the exact figures regarding how much of the payment was vacation pay and how much was retirement pay, the Board has calculated the amount of the retirement pay to be nine thirteenths of \$7595.19 or \$5258.00 (rounded off to the nearest dollar) .

Having concluded that \$5258.00 is the proper amount to be deducted, the next question to be reached is how to allocate that amount. Under the provisions of §8-1008 and COMAR 24.02.02.14 E (2) (d), the special retirement pay of \$5258.00 should be divided by the claimant's last weekly rate of pay. See also, Mahla, 916-BR-85. The testimony at the hearing and in the record only indicates that the claimant earned \$13.00 per hour. There is no testimony regarding the average number of hours per week that the claimant worked. Therefore, in order to calculate that figure, the Board has averaged the

claimant's quarterly wages from Bethlehem Steel for the last complete four quarters that he worked there (see Board Exhibit No. 1, taken from the official records of the Agency) and calculated from those amounts that the claimant's average weekly rate of pay was \$700.00 (rounded off to the nearest dollar). Applying these calculations, the Board finds that the special retirement pay of \$5258.00 should be divided by \$700.00, which results in a weekly deduction of \$700.00 for a period of 7.5 weeks.

The final question that must be resolved is the exact dates to which this special pension amount is attributable. §8-1008 (c) (3) of the Labor and Employment Article states that:

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...

However, the Board has held that where the special retirement payment is made for a specific three-month period which did not even begin until the claimant had been laid off for several months, the disqualification should begin at the beginning date of that specific period. Humphrey v. Bethlehem Steel, 285-BR-85; see also, Mahla, 916-BR-85. In this one context, the term "separation from employment" means more than simply being laid off. In this context, it means the date of the retirement.

The facts in this case are almost identical with those in Mahla and Humphrey; all three cases involved special retirement payments paid in a lump sum (combined with vacation pay) sometime after the claimant had been laid off from Bethlehem Steel'. The only difference here is that the period between the time that the claimant was laid off and the time that he retired was only two weeks, rather than several months. However the Board does not find this to be a significant difference.

Therefore, the Board concludes that the 7.5 weeks during which \$700.00 should be deducted from the claimant's weekly benefit amount should begin the week beginning August 30, 1992 and continue through the week ending October 17, 1992, plus a deduction of \$350.00 for the week ending October 24, 1992. Since the claimant's weekly benefit amount is \$223.00, he is totally disqualified from unemployment insurance benefits for each of these weeks.

¹In Humphrey and Mahla the Board distinguished the facts from those in Jancewski v. Bethlehem Steel Corp., 2150-BH-83, a case in which the Board held that the special retirement pay should be deducted beginning with the first week that the claimant was unemployed. The same factual distinction applies to this case.

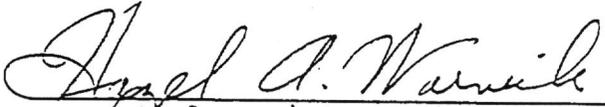
For all the reasons cited above, the decision of the Hearing Examiner is modified. Any overpayment should be recalculated, in accord with this decision.

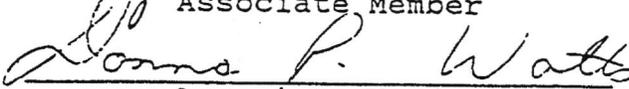
DECISION

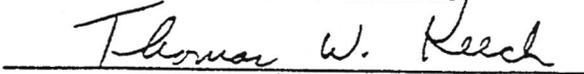
The claimant received a special retirement payment which is deductible from benefits, within the meaning of §8-1008 of the Labor and Employment Article. He is disqualified from the receipt of benefits from the week beginning August 30, 1992 through the week ending October 24, 1992.

The claimant is in receipt of a periodic pension in the amount of \$328.00 per week based on work performed for a base period employer within the meaning of 58-1008 of the Labor and Employment Article. He is disqualified from the receipt of benefits from the week beginning November 29, 1992 and until he no longer receives this amount from a base period employer.

The decision of the Hearing Examiner is modified.


Associate Member


Associate Member


Chairman

HW:W:K

ubm

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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - BALTIMORE



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 —

Date: Mailed 12-11-92

Claimant: Arnold S. Williams

Appeal No.: 9223677

S. S. No.:

Employer: Bethlehem Steel Corporation
Sparrows Point Plant
Sparrows Point, MD 1219

L. O. No.: 01

Claimant

Appellant:

Issue:

Whether the claimant was overpaid benefits under the MD Code, Labor and Employment Article, Title 8, Section 809. 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 under the 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.

December 28, 1992

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES ON

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:

Present

FOR THE EMPLOYER:

Represented by
William G. Wheeler,
Coordinator

FINDINGS OF FACT

The claimant, Alonzo S. Williams, was employed by Bethlehem Steel Corporation from April 19, 1955 until August 14, 1992. The claimant was laid off, effective August 15, 1992 as a

result of the company shutting down its barrel point rod mill. Mr. Williams elected to retire, effective September 1, 1992. He received a special retirement payment on September 30, 1992. This lump sum payment represented his unused vacation and nine weeks pay at his regular weekly rate. This amount totaled \$7,595.19. The claimant's regular pension payments began on December 1, 1992.

CONCLUSIONS OF LAW

This special retirement payment defined and computed pursuant to Section 8-1008(a)(b)(c). Accordingly, this lump sum payment, in its entirety, should be prorated for the three months (twelve week) period. To the extent that this computation (weekly average) equals or exceeds the weekly benefit amount (\$223.00) the claimant is disqualified. In the alternative, if the amount prorated is less than the weekly benefit amount, the claimant may receive benefits.

DECISION

It is held that the claimant is receiving or has received a pension or other similar periodic payments amounting to \$632.00 per week. This amount is in excess of his weekly benefit amount of \$223.00. This pension amount disqualifies the claimant under Maryland Unemployment Insurance Law, Title 8, Section 1008, from receiving benefits.

The determination of the Claims Examiner is affirmed.

Charles Weinberg, V.T.
Charles Weinberg
HEARING EXAMINER

DATE OF HEARING: 12-7-92
SPECIALIST ID: 01071
vt/CASSETTE IN FILE

COPIES MAILED ON 12-11-92 TO:

Claimant
Employer
Unemployment Insurance - Baltimore (MABS)

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor

Mark L. Wasserman, Secretary

Gary W. Wiedel, Administrator

Louis Wm. Steinwedel, Chief Hearing Examiner

Room 501

1100 North Eutaw Street

Baltimore, Maryland 21201

Telephone: (410) 333-5040

— DECISION —

Date: Mailed: 1/20/93
Claimant: Charles A. Facello Appeal No.: 9225757
S. S. No.:
Employer: Bethlehem Steel Corporation L. O. No.: 040
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 BOARD OF APPEALS, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES ON February 4, 1993
NOTICE: 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:

William Wheeler,
Personnel
Coordinator

Other: R. Keiser, Claims Specialist

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits establishing a benefit year, effective April 12, 1992.

He is entitled to \$223 weekly in unemployment insurance benefits. The claimant reopened his request for unemployment insurance benefits on November 14, 1992 and became eligible for unemployment insurance benefits. The claimant refiled his claim for unemployment insurance benefits because the mill that he worked for at Bethlehem Steel Corporation shut down, effective August, 1992. As a result of the mill shut down, the claimant was laid off from work. The local Eastpoint office determined that the layoff of the claimant and the shut-down of his department entitled the claimant to unemployment insurance benefits, even though the claimant was not eligible to receive a monthly pension, effective December 1, 1992. Although the claimant received a lump sum payment of \$7,662.22 on September 10, 1992, the Agency determined that the claimant was entitled to benefits because of the shut-down and that the benefits received were not deductible from claimant's weekly unemployment amount. That lump sum payment included three weeks of vacation pay. But, the claimant, is no longer eligible for unemployment insurance benefits once he begins to receive his monthly pension payment, which began December 1, 1992.

CONCLUSIONS OF LAW

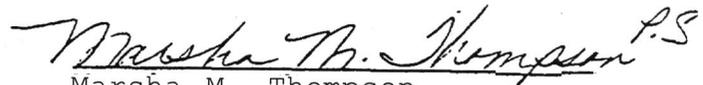
The Maryland Code, Labor and Employment Article, Title 8, Section 1008 retirement payments is defined as (1) means an amount in the form of a pension, annuity, or retirement pay from a trust, annuity, profit sharing plan, insurance fund, annuity or insurance contract, or any of the similar lump sum or periodic payment that is based on any previous covered employment for a base period employer under a plan paid for wholly or partially by base period employer; and (2) does not include a payment from a State or Federal workers compensation program. (b)(2) a retirement benefit in the form of a lump sum payment that employing unit pays as a result of layoff or shut-down shall not be deductible from benefits for the period of eligibility.

Since the initial reason for the claimant's separation from employment is the shut-down of his department and the claimant elected to accept a lump sum payment subsequent to that layoff, the payment received is not disqualifying, within the meaning of of the Maryland Unemployment Insurance Law.

DECISION

It is held that the claimant has received a lump sum payment in the amount of \$7,662.20 because his department shut down. While the amount is in excess of the claimant's weekly benefit amount of \$223, the payment received is not disqualifying, which

entitles the claimant to receive unemployment insurance benefits, within the meaning of MD Code, Labor and Employment Article, Title 8, Section 1008. Therefore, the claimant is entitled to received benefits beginning on November 14, 1992 and until monthly pension payments began on December 1, 1992, or until Bethlehem Steel Corporation is no longer a base period employment of this claimant.


Marsha M. Thompson
Hearing Examiner

Date of Hearing: 1/5/93
ps/Specialist ID: 40352
Cassette No: Attached to File
Copies mailed on 1/20/93 to:

Claimant
Employer
Unemployment Insurance - Eastpoint (MABS)



Maryland

Department of Economic & Employment Development

William Donald Schaefer, Governor

Mark L. Wasserman, Secretary

Gary W. Wiedel, Administrator

Louis Wm. Steinwedel, Chief Hearing Examiner

Room 501

1100 North Eutaw Street

Baltimore, Maryland 21201

Telephone: (410) 333-5040

— DECISION —

Date:	Mailed:	1/16/93
Claimant: Henry J. Gogdell	Appeal No.:	9223365
	S. S. No.:	
Employer: Bethlehem Steel Corp.	L. O. No.:	1
	Appellant:	Claimant/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 MD Code, Title 8, Section

— NOTICE OF RIGHT OF FURTHER APPEAL —

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2/1/93

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES ON

NOTICE: 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:
William Wheeler,
Coordinator/
Personnel

FINDINGS OF FACT

The claimant retired effective September 1, 1992, as a result of elimination of his job. The claimant was given several options. First he would be permitted to bid on a job in the plant labor pool. Second he could bid on any available vacancy within

the plant. He could accept a pension if eligible to do so. The claimant chose to accept a pension and was paid \$9,481.08 as special retirement benefits. This amount included four weeks of vacation time due to the claimant and covered the months of September, October and November 1992. Effective December 1, 1992, the claimant would receive \$1,146.27 per month for life.

CONCLUSIONS OF LAW

COMAR 24.02.02.14A(2) defines lump sum pension as a pension that is paid in one payment. Maryland Unemployment Insurance Law, Section 1008(b)(2) states that a retirement benefit in the form of a lump sum payment that the employer pays as a result of a lay off or shut down, shall not be deductible from the benefits for the period of eligibility.

The issue in this case is whether the special retirement benefit of \$9,481.08 constitutes a lump sum pension. It is held that it does not; meet the special retirement benefit, which in this case include nine weeks pay plus four weeks vacation pay, is more in the form of a deferred compensation payment is designed to assist the former employees during the three month period from the date of separation until the regular pension benefits are received.

Certainly the payment of \$9,481.08 does not represent the "gross amount" of the pension that the claimant will receive. (See COMAR 24.02.02.14).

However, the inquiry does not stop here. Although the claimant's four weeks of unused vacation is represented in the form of money in the \$9,481.08 he received in special retirement benefits, it is, in fact, money that he had already earned at the time of his retirement. Based on his average wage of approximately \$13 per hour, claimant received as vacation pay approximately \$4,081. The remainder of the \$9,481.08, is attributable to the nine weeks pay that is represented in the special retirement benefits.

Dividing the remaining \$5,400 by 3, we see that the claimant received approximately \$1,800 per month or approximately \$418.60 per week for the nine week period in question.

Because the vacation pay is not considered a part of a retirement benefit, it is not disqualifying. Therefore, for the period of August 30, 1992, through September 26, 1992, the claimant is not disqualified as a result of the receipt of the \$9,481.08.

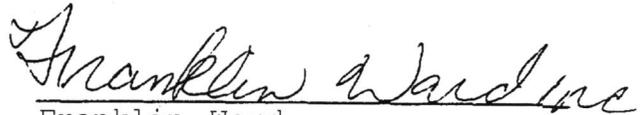
The nine weeks of special retirement pay begins effective September 27, 1992, and ends on November 28, 1992. For

unemployment insurance purposes the pension payment is effective September 27, 1992.

DECISION

It is held that the claimant is in receipt of a pension from his employer effective September 27, 1992. For this reason the claimant's unemployment insurance benefits will be reduced pursuant to Section 1008 of the Maryland Unemployment Insurance Law, beginning with the week September 27, 1992. The reduction for the period September 27, 1992, until November 29, 1992, shall be \$418 per week. Effective November 29, 1992, the claimant's weekly benefit amount will be reduced by \$290.

The determination of the Claims Examiner is modified.



Franklin Ward
Hearing Examiner

Date of hearing: 12/17/92
rc/Specialist ID: 40297
Copies mailed on 1/16/93 to:

Claimant
Employer
Unemployment Insurance - Eastpoint - MABS