



Maryland

Department of Economic & Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (301) 333-5032

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

— DECISION —

	Decision No.:	1093-BR-91
	Date:	Sept. 5, 1991
Claimant: Alan Puffenberger	Appeal No.:	9015701
	S. S. No.:	
Employer: Hobby House Press, Inc.	L O. No.:	3
	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 6(g) of the law.

— 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

October 5, 1991

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

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

The claimant was entitled to receive two lump sum pension payments, after he was separated from Hobby House Press, Inc. Although there was a delay in the actual payment of the money, due to administrative processing, the claimant was entitled to the money at the time he was separated.

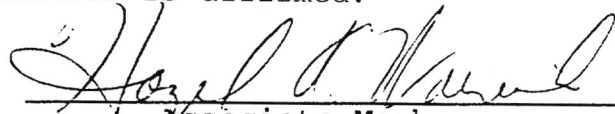
When a claimant is entitled to receive a pension amount, but it is not due at or near the actual time of unemployment, the Board has held that the allocation of the lump sum under Section 6(g) should not begin until the the actual payment of the lump sum. Chinn v. Bedding Barn, Inc., 841-BH-89. However, where, as here, the entitlement to the pension corresponded with the date of unemployment, but there has been an administrative delay in the actual payment, a delay in the application of the 6(g) penalty is not appropriate. See, Chinn, supra; see also, Hackett v. Cropper Brothers Lumber Co., 799-BR-88 and Carmichael v. Credit Bureau of Baltimore, Inc. 495-BR-90.

Therefore, the Hearing Examiner correctly concluded that the pension amounts are deductible from the claimant's benefits, beginning October 18, 1990. The Board takes administrative notice that, according to agency records, the claimant's separation from employment with Hobby House Press, Inc., was not due to a layoff or shutdown of operations.

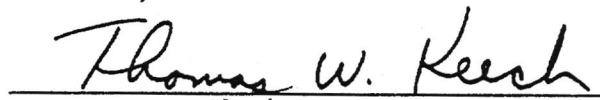
DECISION

The claimant has received a lump sum pension payment which is disqualifying pursuant to Section 6(g)(1)(i) and 6(g)(3)(ii) of the Maryland Unemployment Insurance Law. Benefits are denied from October 18, 1990 and for a number of weeks thereafter, in accordance with the formula set forth pursuant to the number of weeks of pay received at the individual's last pay rate.

The decision of the Hearing Examiner is affirmed.



Associate Member



Chairman

HW:K

kbm

COPIES MAILED TO:

CLAIMANT

UNEMPLOYMENT INSURANCE - CUMBERLAND

John T. McGucken, Legal Counsel, D.E.E.D.



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

— D E C I S I O N —

Claimant:	Alan W. Puff Puffenberger	Date:	Mailed: 12/24/90
		Appeal No.:	9015701
		S. S. No.:	
Employer:	Hobby House Press, Inc.	L.O. No.:	003
		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 section 6(a) of the law.

— 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.

THE PERIOD FOR FILING A FURTHER APPEAL EXPIRES AT MIDNIGHT ON January 8, 1991

— A P P E A R A N C E S —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Alan W. Puffenberger - Present

Gary Ruddell,
 President and Jim
 Cook, General
 Manager

FINDINGS OF FACT

The claimant filed an original claim for unemployment insurance benefits at Cumberland, effective October 21, 1990.

The claimant was discharged for a non-disqualifying reason pursuant to the provisions of Section 6(c) of the Maryland Unemployment Insurance Law. Concurrently, the Claims Examiner determined that the claimant is entitled to the receipt of a lump sum pension, based upon information presented by the employer. AS a result, the claimant was disqualified from October 14, 1990 to August 17, 1991.

The claimant was employed by Hobby House Press, Inc. from December 1979 until October 17, 1990 as Director of Operations at a hi-weekly pay rate of \$1,423.00.

At the time of separation from. employment, the claimant became eligible for two pensions. The first is designated as Hobby House Press Segregated Trust and the second is designated Hobby House Press Trust Plan. Each of these plans was paid for in whole by the employer.

The claimant has a one hundred percent vested interest in the segregated trust in the current amount of \$16,643.25. He also has an eight percent vested interest in the trust plan with a current amount of \$14,163.26.

Although the claimant is vested in these amounts, the employer is required to wait until after December 31, 1990 to compute the accumulated interest to which the claimant is otherwise entitled. Disbursement of these monies will occur on or after February 1, 1991.

The claimant contends that he should be allowed unemployment insurance benefits pending receipt of these monies.

CONCLUSIONS OF LAW

Section 6(g)(1)(i) and 6(g)(3)(ii) of the Maryland Unemployment Insurance Law sets forth the basis and criteria for determining eligibility of an individual who is entitled to the receipt of a pension from the base period employer.

The Statute provides disqualification where; "the entire amount which an individual received or will receive with respect to a week in the form of a retirement payment from the base period employing unit for which he performs services and which pays all of the cost of such retirement payment, or from a trust, annuity, profit sharing plan or insurance fund, or under annuity or insurance contract, to or under which a base period employing unit for which her performs services pays or has paid all the premiums or contributions. . . ." Section 6(g)(3)(ii) provides as follows:

"a lump sum payment of a pension, annuity or retirement or retired pay, or from a trust, profit sharing plan, or insurance fund, or under an annuity or insurance contract shall be allocated to insure a number of weeks following the date of separation according to the number of weeks of pay received at the individuals last pay rate."

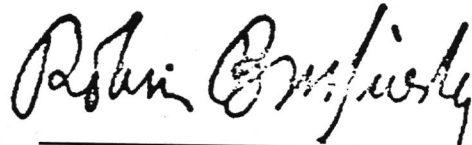
Accordingly, pursuant to the requirements of the unemployment insurance law, the claimant is not eligible for the receipt of benefits with respect to the entire amount of the lump sum pension payment which he "will receive with respect to a week" and said amount must be allocated to a number of weeks following the date of separation according to the number of weeks of pay received at the individuals last pay rate. Since the Statute is clear that there must be a disqualification or a reduction from benefits to which the individual is otherwise entitled for a pension payment which he will receive with respect to a week must be allocated from the date of separation, the claimant is not eligible for benefits until the number of weeks required by the Statute has elapsed.

The method of determining the number of weeks should be as follows:

The claimant's gross hi-weekly pay rate shall be multiplied by 26 and then divided by 52 to establish his weekly pay rate. That amount shall then be divided into the sum of the two lump sum pension amounts for which he is presently eligible, subject to assessment for accrued interest which will be calculated later.

DECISION

The claimant will receive a lump sum pension payment which is disqualifying pursuant to the provisions of Section 6(g)(1)(i) and 6(g)(3)(ii) of the Maryland unemployment Insurance Law. Benefits are denied from October 18, 1990 and for a number of weeks thereafter in accordance with the formula set forth above pursuant to the number of weeks of pay received at the individuals last pay rate, which shall be computed by the Claims Examiner or roughly 40.7 weeks.



Robin L. Brodinsky
Hearing Examiner

Date of Hearing: December 13, 1990

km/Specialist ID: 03252

Cassette No: 10166

Copies, mailed on December 24, 1990 to:

Claimant

Employer

Unemployment Insurance - Cumberland (MABS)