

DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
HARRY HUGHES
Governor

BOARD OF APPEALS
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5032

BOARD OF APPEALS

THOMAS W. KEECH
Chairman

HAZEL A. WARNICK
MAURICE E. DILL
Associate Members

SEVERN E. LANIER
Appeals Counsel

MARK R. WOLF
Chief Hearing Examiner

— DECISION —

Decision No.: 285-BR-85

Date: May 6, 1985

Claimant: Ernest W. Humphrey, Jr.

Appeal No.: 12405 & 13169

S. S. No.:

Employer: Bethlehem Steel Corp.

L.O. No.: 40

Appellant CLAIMANT

Issue: Whether the claimant is receiving or has received dismissal payments or wages in lieu of notice within the meaning of §6(h); whether the claimant has received benefits for which he was disqualified or otherwise ineligible within the meaning of §17(d); and 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 §6(g) of the

— 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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON June 5, 1985

— APPEARANCES —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the findings of fact of the Appeals Referee but rejects the conclusions of law made.

The Appeals Referee found that the payment of \$3,024 was a disqualifying pension, but he imposed this disqualification upon the claimant three months earlier than the Claims Examiner had, without stating any reason for the change. In addition, the Appeals Referee stated in the decision that the overpayment owed by the claimant was \$990, while in reality his decision brought about a much greater overpayment. Since the claimant had no notice that the decision increased the overpayment, the claimant was not given proper notice of the decision within the meaning of Ottenheimer Publishers v. Employment Security Administration; 275 Md. 514 (1975). Thus, the claimant's appeal was timely.

The Board affirms the decision of both the Appeals Referee and the Claims Examiner, in case 13169, that the claimant's receipt of \$812.98 in a monthly pension since November 1, 1984 disqualifies him from the receipt of benefits from that date until he no longer received the pension in that amount from a base period employer.

The Board also affirms the decision of the Appeals Referee in case 12405 that the special payment of \$3,024 is a pension under §6(g) of the law and not severance pay under §6(h) of the law. See, the Board's decision in the Jancewski case (2150-BH-83). The Board disagrees with the Appeals Referee, however, as to the date when this pension disqualification begins and ends.

The \$3,024 pension paid in this case was not a specially increased pension amount paid in a lump sum as a special benefit to an especially longterm employee, as was the payment in the Jancewski case. In that case, the amount paid was far more than the sum of the regular monthly pension payments normally due between the first date of layoff and the first date of receipt of the monthly pension. In that case, it was appropriate to divide the sum by the claimant's weekly salary and to make unemployment deductions from the first week of unemployment.

In this case, however, the special payment of \$3,024 was made for a specific three-month period which didn't even begin until the claimant had been laid off for three months. (It began when the claimant retired on August 1, 1984). This payment is clearly applicable to the period beginning August 1, 1984, as originally determined by the Claims Examiner.

The Claims Examiner, however, disqualified the claimant under §6(h), while the proper disqualification was under §6(g). Under §6(g) (3) (ii), the lump sum pension should be prorated by dividing the amount by the claimant's weekly salary. Thus, the \$3,024 divided by the claimant's weekly salary of \$470 yields a disqualification for the 6.4 weeks beginning on August 1, 1984. This results in a total disqualification from August 1, 1984 until September 15, 1984. The claimant is totally disqualified from benefits for this period. During six of these weeks (from the week ending August 4, 1984 to the week ending September 8, 1984), the claimant was paid \$990 in benefits. The claimant was

ineligible for these benefits and they must be repaid under §17(d) of the law. (This is the same final result reached by the Claims Examiner, but it was reached through different reasoning.)

DECISION

In case number 13169, the claimant received a pension effective November 1, 1984 which reduces his unemployment eligibility to zero. He is disqualified from the receipt of benefits under §6(g) of the law from the week ending November 3, 1984 and until he no longer receives this amount from a base period employer.

In case number 12405, the claimant is disqualified under §6(g) (3)(ii) of the law from the receipt of benefits on account of the receipt of a lump sum pension. The disqualification extends from the week ending August 4, 1984 until the week ending September 8, 1984. In addition, since the claimant received benefits totaling \$990 during this period, he is overpaid that amount under §17(d) of the law.

The decision of the Appeals Referee is reversed.


Chairman


Associate Member

K:W

kbm

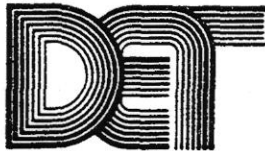
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CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - EASTPOINT

Appeals Referee Askin



DEPARTMENT OF EMPLOYMENT AND TRAINING

**STATE OF MARYLAND
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Associate Members**

**SEVERN E. LANIER
Appeals Counsel**

**MARK R. WOLF
Chief Hearing Examiner**

— DECISION —

	Date:	Mailed 12/24/84
Claimant: Ernest W. Humphrey, Jr.	Appeal No.:	12405 & 13169
	S. S. No.:	
Employer: Bethlehem Steel Corporation	LO. No.:	40
	Appellant:	Claimant

Issue: Whether the claimant is receiving or has received dismissal payments or wages in lieu of notice within the meaning of Section 6(h) of the Law. Whether the claimant has received benefits for which he was disqualified or otherwise ineligible within the meaning of Section 17(d). 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 FURTHER APPEAL —

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A FURTHER APPEAL AND SUCH APPEAL MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE, 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 PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON January 8, 1985

— APPEARANCES —

FOR THE CLAIMANT:

Claimant-Present

FOR THE EMPLOYER:

William Wheeler-
Employment Coordinator

Other: Mildred Ward-
Claims Specialist I-
Department of Employment
and Training

This appeal as scheduled by the Appeals Division, covered only Section 6 (h) and 17 (d) of the Maryland Unemployment Insurance Law. Until the appeal was actually heard, the Lower Appeals Division was not aware that a determination had been made disqualifying the claimant under Section 6 (g) of the Maryland Unemployment Insurance Law. The Appeals Referee has determined to assume jurisdiction over the 6 (g) issue and the following decision covers this issue.

FINDINGS OF FACT

The claimant began working for the employer as a full-time Security Officer September 18, 1961. His last day of work was April 30, 1984, when, due to a reduction of the work force, the claimant took early retirement.

The claimant was paid, pursuant to Bethlehem Pension set-up, a special retirement payment in lump sum in the amount of \$3024 covering a period of August 1, 1984 to October 31, 1984. Commencing November 1, 1984, the claimant began receiving monthly pension benefits in the amount of \$812.98. The pension was non-contributory. The claimant did not receive his lump sum check in the amount of \$3024 until September 17, 1984. As a result of the determination, the claimant was held overpaid in the amount; of \$990.

CONCLUSIONS OF LAW

The non-monetary determination of the Claims Examiner that the claimant was disqualified under Section 6(h) of the Maryland Unemployment Insurance Law is not supported by the testimony and evidence before the Appeals Referee. The claimant did not receive severance pay and because of this, Section 6(h) of the Law is not applicable. It is for this reason that determination of the Claims Examiner must be reversed. However, the claimant must be held overpaid in the amount of \$990 in unemployment insurance benefits paid to him for which he was ineligible.

The claimant is receiving non-contributory pension benefits in excess of his weekly benefit amount, effective November 1, 1984 from his base period employer and, therefore, must be disqualified under Section 6(g) of the Law.

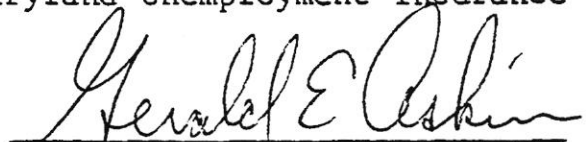
DECISION

The non-monetary determination of the Claims Examiner disqualifying the claimant under Section 6(h) of the Maryland Unemployment Insurance Law is reversed. The disqualification imposed from July 29, 1984 to November 3, 1984 is rescinded.

The claimant is ineligible for benefits under Section 6(g) of the Maryland Unemployment Insurance Law. Benefits are denied from April 29, 1984 (not July 29, 1984) and until his pension deduction no longer equals or exceeds his weekly benefit amount.

The determination of the Claims Examiner is modified to this extent.

The claimant is held overpaid in the amount of \$990 within the meaning of Section 17(d) of the **Maryland Unemployment Insurance** Law.


Gerald E. Askin
APPEALS REFEREE

Date of hearing: November 26, 1984

Cassette: 8548

hf (M. Ward)

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Claimant
Employer
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