

- DECISION -

Claimant:
HERMAN WILSON

Decision No.: 3570-BR-13

Date: December 2, 2013

Appeal No.: 1314362

S.S. No.:

Employer:
RG STEEL SPARROWS POINT LLC

L.O. No.: 60

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 Maryland Code, Labor and Employment Article, Title 8, Section 1008.

- NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to file the appeal can be found in many public libraries, in the *Maryland Rules of Procedure, Title 7, Chapter 200*.

The period for filing an appeal expires: January 1, 2014

REVIEW OF THE RECORD

After a review of the record, the Board adopts the hearing examiner's findings of fact. The Board concludes that these facts warrant different conclusions of law and a reversal of the hearing examiner's decision.

The General Assembly declared that, in its considered judgment, the public good and the general welfare of the citizens of the State required the enactment of the Unemployment Insurance Law, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit

of individuals unemployed through no fault of their own. *Md. Code Ann., Lab. & Empl. Art., §8-102(c)*. Unemployment compensation laws are to be read liberally in favor of eligibility, and disqualification provisions are to be strictly construed. *Sinai Hosp. of Baltimore v. Dept. of Empl. & Training, 309 Md. 28 (1987)*.

The Board reviews the record *de novo* and may affirm, modify, or reverse the findings of fact or conclusions of law of the hearing examiner on the basis of evidence submitted to the hearing examiner, or evidence that the Board may direct to be taken, or may remand any case to a hearing examiner for purposes it may direct. *Md. Code Ann., Lab. & Empl. Art., §8-510(d); COMAR 09.32.06.04*. The Board fully inquires into the facts of each particular case. *COMAR 09.32.06.03(E)(1)*.

Md. Code Ann., Labor & Emp. Article, § 8-1008 and *COMAR 09.32.02.14* provide that an individual may be partially disqualified from the receipt of benefits for each week in which the Secretary determines that the individual, who is otherwise eligible for benefits, receives a retirement payment, if the weekly amount of the retirement payment is less than the individual's weekly benefit amount. In such a case, the individual may receive benefits which are reduced by the amount of the retirement payment.

As provided in *§8-1008*, "retirement payment" means an amount in the form of a pension, annuity, or retirement or retired pay from a trust, annuity, profit sharing plan, insurance fund, annuity or insurance contract, or any other 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 partly by a base period employer and does not include a payment from a state or federal workers' compensation program.

Md. Code Ann., Labor & Emp. Article, §8-1008, further provides a formula to compute the effect of a retirement payment on eligibility for benefits, which states that: (1) if a base period employer paid the full cost of the plan that provides the retirement, the full retirement payment shall be considered; and (2) if a base period employer paid only part of the cost of the plan that provides the retirement payment, 50% of the retirement payment shall be considered. In addition, *§8-1008*, requires that 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. Read collectively, *Maryland Code, Labor & Employment Article, Title 8, Section 101 (c) and (b)*, define "base period employer" as "any employing unit who paid wages to an individual during the first 4 of the last 5 completed calendar quarters immediately preceding the start of the benefit year."

In his appeal, the claimant reiterates his testimony from the hearing. The claimant contends his benefits should only be reduced by one-half of the amount of his total pension which is attributable to his base-period employer. The Board disagrees.

On appeal, the Board reviews the evidence of record from the Lower Appeals hearing. The Board will not order the taking of additional evidence or a new hearing unless there has been clear error, a defect in the record, or a failure of due process. The record is complete. The claimant appeared and testified. The necessary elements of due process were observed throughout the hearing. The Board finds no reason to order a new hearing or take additional evidence in this matter. Sufficient evidence exists from which the Board may make its decision.

The Board has thoroughly reviewed the record from the hearing. The claimant receives a monthly pension payment into which contributions were made by several employers. The claimant did not contribute to this pension. One of those employers was the claimant's base-period employer. The amount of the claimant's total pension which is attributable to this base-period employer is \$178.98. The claimant's unemployment benefits should be reduced by one-half of the amount of his total pension. His weekly unemployment benefit should be reduced by \$104.53, so long as this employer remains a base-period employer.

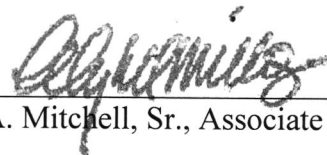
DECISION

IT IS HELD THAT the claimant receives a pension payment, part of which is from a base-period employer. Pursuant to *Maryland Code Ann., Labor and Emp. Article, §8-1008*, one-half the claimant's total pension payments attributable to the base-period employer is disqualifying.

The hearing examiner's decision is reversed.



Donna Watts-Lamont, Chairperson



Clayton A. Mitchell, Sr., Associate Member

KP/MW

Copies mailed to:

HERMAN WILSON

RG STEEL SPARROWS POINT LLC

SUSAN BASS DLLR

Susan Bass, Office of the Assistant Secretary

UNEMPLOYMENT INSURANCE APPEALS DECISION

HERMAN WILSON

SSN #

Claimant

vs.

RG STEEL SPARROWS POINT LLC

Employer/Agency

Before the:

**Maryland Department of Labor,
Licensing and Regulation**

Division of Appeals

1100 North Eutaw Street

Room 511

Baltimore, MD 21201

(410) 767-2421

Appeal Number: 1314362

Appellant: Claimant

Local Office : 60 / LARGO

June 10, 2013

For the Claimant: PRESENT

For the Employer:

For the Agency:

ISSUE(S)

Whether the claimant's receipt of a pension based on wages from a base period employer is disqualifying within the meaning of MD Code Annotated, Labor and Employment Article, Title 8, Section 1008.

FINDINGS OF FACT

The claimant, Herman Wilson, began working for this employer, RG Steel Sparrows Point LLC, in January of 2011. At the time of separation, the claimant was working as a full-time crane operator. The claimant last worked for the employer on June 15, 2012, before being laid off when the employer closed its operations.

The claimant began receiving a non-contributory pension from a pension trust fund (Steel Workers Pension Trust) on January 1, 2013 (the first actual payment occurring in early April, but being retroactive to cover the period from January 1, 2013), for which the claimant receives \$905.92 per month (equating to \$209.06 per week). Three previous employers contributed to this fund based on the claimant's work in the steel industry for almost ten years. The trust calculates that only \$178.98 of the monthly pension payment is based on contributions from this employer (*See Claimant Exhibit No. 1*). The claimant opened his

unemployment claim, effective the week beginning December 25, 2012. The claimant qualified for a weekly benefit amount of \$430.00.

CONCLUSIONS OF LAW

Md. Code Ann., Labor & Emp. Article, Section 8-1008 and COMAR 09.32.02.14 provide, in essence, that an individual may be disqualified from receiving benefits for each week in which the Secretary determines that the individual, who otherwise is eligible for benefits, receives a retirement payment, if the weekly amount of the retirement payment at least equals the individual's weekly benefit amount.

As provided in Section 8-1008, "retirement payment" means an amount in the form of a pension, annuity, or retirement or retired pay from a trust, annuity, profit sharing plan, insurance fund, annuity or insurance contract, or any other similar lump sum or periodic payment that is based on any previous covered employment for a base period employer, and does not include a payment from a state or federal workers' compensation program.

Section 8-1008 further provides a formula to compute the effect of a retirement payment on eligibility for benefits, which states that: (1) if a base period employer paid the full cost of the plan that provides the retirement, the full retirement payment shall be considered; and (2) if a base period employer paid only part of the cost of the plan that provides the retirement payment, 50% of the retirement payment shall be considered.

In addition, Section 8-1008 requires that 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. 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 in accordance with the number of weeks of pay that an individual received at the individual's last wage rate.

Md. Code Ann., Labor & Emp. Article, Section 8-1008 and COMAR 09.32.02.14 provide that an individual may be partially disqualified from the receipt of benefits for each week in which the Secretary determines that the individual, who is otherwise eligible for benefits, receives a retirement payment, if the weekly amount of the retirement payment is less than the individual's weekly benefit amount. In such a case, the individual may receive benefits which are reduced by the amount of the retirement payment.

As provided in Section 8-1008, "retirement payment" means an amount in the form of a pension, annuity, or retirement or retired pay from a trust, annuity, profit sharing plan, insurance fund, annuity or insurance contract, or any other 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 partly by a base period employer and does not include a payment from a state or federal workers' compensation program.

Section 8-1008 further provides a formula to compute the effect of a retirement payment on eligibility for benefits, which states that: (1) if a base period employer paid the full cost of the plan that provides the retirement, the full retirement payment shall be considered; and (2) if a base period employer paid only part of the cost of the plan that provides the retirement payment, 50% of the retirement payment shall be considered.

In addition, Section 8-1008 requires that 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. 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 in accordance with the number of weeks of pay that an individual received at the individual's last wage rate.

EVALUATION OF EVIDENCE

The Hearing Examiner considered all of the testimony and evidence of record in reaching this decision. Where the evidence was in conflict, the Hearing Examiner decided the Facts on the credible evidence as determined by the Hearing Examiner.

A claimant who receives a pension is ineligible for (or the extent that) benefits if it is established, by a preponderance of the evidence, that the pension payments meet the requirements as set forth in Section 8-1008 above. In the case at bar, this burden has been met.

The claimant is in receipt of monthly pension payments of \$905.92 from a fund contributed to by a base period employer. The claimant did not contribute to the payments. The pro-rated weekly portion of the payments are less than the claimant's weekly benefit amount.

That being the case, it is found that the pension payments are partially disqualifying within the meaning of the sections of law cited above.

DECISION

IT IS HELD THAT the claimant is in receipt of a retirement payment that is less than the claimant's weekly benefit amount. The claimant is entitled to receive benefits reduced by the amount of the retirement payment, within the meaning of Md. Code Ann., Labor & Emp. Article, Section 8-1008. Benefits under this formula are allowed for the week beginning January 5, 2013. The claimant is eligible for benefits so long as all other eligibility requirements are met. The claimant may contact Claimant Information Service concerning the other eligibility requirements of the law at ui@dllr.state.md.us or call 410-949-0022 from the Baltimore region, or 1-800-827-4839 from outside the Baltimore area. Deaf claimants with TTY may contact Client Information Service at 410-767-2727, or outside the Baltimore area at 1-800-827-4400.

The determination of the Claims Specialist is modified (only as to the start date of the disqualification).



D A Fisher, Esq.
Hearing Examiner

Notice of Right to Request Waiver of Overpayment

The Department of Labor, Licensing and Regulation may seek recovery of any overpayment received by the Claimant. Pursuant to Section 8-809 of the Labor and Employment Article of the Annotated Code of Maryland, and Code of Maryland Regulations 09.32.07.01 through 09.32.07.09, the Claimant has a right to request a waiver of recovery of this overpayment. This request may be made by contacting Overpayment Recoveries Unit at 410-767-2404. If this request is made, the Claimant is entitled to a hearing on this issue.

A request for waiver of recovery of overpayment does not act as an appeal of this decision.

Esto es un documento legal importante que decide si usted recibirá los beneficios del seguro del desempleo. Si usted disiente de lo que fue decidido, usted tiene un tiempo limitado a apelar esta decisión. Si usted no entiende cómo apelar, usted puede contactar (301) 313-8000 para una explicación.

Notice of Right of Further Appeal

This is a final decision. Any party may request a further appeal either in person, by facsimile or by mail with the Board of Appeals. Under COMAR 09.32.06.01A (1) appeals may not be filed by e-mail. Your appeal must be filed by June 25, 2013. You may file your request for further appeal in person at or by mail to the following address:

Board of Appeals
1100 North Eutaw Street
Room 515
Baltimore, Maryland 21201
Fax 410-767-2787
Phone 410-767-2781

NOTE: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: June 05, 2013
CH/Specialist ID: UTW2P
Seq No: 001
Copies mailed on June 10, 2013 to:
HERMAN WILSON
RG STEEL SPARROWS POINT LLC
LOCAL OFFICE #60
SUSAN BASS DLLR