



STATE OF MARYLAND
 HARRY HUGHES
 Governor

RUTH MASSINGA
 Secretary

DEPARTMENT OF HUMAN RESOURCES

EMPLOYMENT SECURITY ADMINISTRATION
 1100 North Eutaw Street
 Baltimore, Maryland 21201
 Telephone: 383-5032

BOARD OF APPEALS
 THOMAS W. KEECH
 Chairman
 HAZEL A. WARNICK
 MAURICE E. DILL
 Associate Members
 SEVERN E. LANIER
 Appeals Counsel

—DECISION—

	DECISION NO.:	717-BH-83	
	DATE:	June 15, 1983	
CLAIMANT:	Dulcie I. Carey	APPEAL NO.:	02349
		S.S.NO.:	
--	Stewart & Company		
EMPLOYER:		LO. NO.:	22
		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 her weekly benefit amount, within the meaning of §6(g) of the Law; and whether the Claimant is receiving or has received dismissal payments or wages in lieu of notice within the meaning of § 6(h) 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 MAY BE 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 July 15, 1983

— APPEARANCE —

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Dulcie I. Carey - Present

EMPLOYMENT SECURITY ADMINISTRATION
 John Zen - Legal Counsel

EVIDENCE CONSIDERED

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 Employment Security Administration's documents in the appeal file.

FINDINGS OF FACT

The Claimant was employed by Stewart & Company as a salesperson from October, 1974 until she was laid off on January 24, 1983, as a result of the Employer permanently closing all its stores and discontinuing operations.

At the time she was laid off, the Claimant received two lump sum payments from the Company, one for \$714.00 in severance pay and an additional "non-vested pension benefit" of \$1,003.12, obtained from a special fund of the Employer for "closing costs," to provide additional severance pay to certain employees who did not have vested pension rights (see, Claimant's Exhibits B-1 and B-2) .

CONCLUSIONS OF LAW

The Board concludes that both lump sum payments constituted "dismissal payment[s] or wages in lieu of notice," within the meaning of §6(h) of the Law and since "the Employer has permanently discontinued the operation" of the stores, they are not deductible from this Claimant's Unemployment Insurance benefits.

Although the \$1,003.12 payment is referred to as a "non-vested pension benefit," the evidence shows that it was not a "pension, annuity, or retirement or retired pay" as contemplated by §6(g) of the Law, but was intended by the Employer to pay certain employees, including the Claimant, an additional severance pay because the closing of the store resulted in their losing the "opportunity to gain vested pension rights" (see, Claimant's Exhibit B-2). Further, the money was not obtained from a pension fund.

Therefore, the Board concludes that the total amount of the money paid to the Claimant constituted dismissal wages and not a pension.

DECISION

The Claimant is not receiving or has not received a pension or other similar periodic payment within the meaning of §6(g) of the Maryland Unemployment Insurance Law. No disqualification is imposed based on her separation from her employment.

The decision of the Appeals Referee is reversed.

Rayel A. Warrick
Associate Member

Maurice E. Dill
Associate Member

W:D
gm

DATE OF HEARING: May 10, 1983

COPIES MAILED TO:

CLAIMANT

EMPLOYER

John Zen - Legal Counsel

M. C. Ashley, U. I. Director

UNEMPLOYMENT INSURANCE - BEL AIR



DEPARTMENT OF HUMAN RESOURCES
 EMPLOYMENT SECURITY ADMINISTRATION
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 MARK R. WOLF
 Administrative
 Hearings Examiner

- DECISION -

CLAIMANT: Dulcie I . Carey

DATE: March 31, 1983

APPEAL NO.: 02349

S. S. NO.:

EMPLOYER: Stewart & Company

L. O. NO.: 22

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 (g) of the Law.

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 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 April 15, 1983

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Present, accompanied by Elaine Herpel; and Sylvia Snead, Witnesses

Not Represented

FINDINGS OF FACT

The claimant was employed by Stewart's Department store as a salesperson from October, 1974 until January 24, 1983. She was earning \$178.50 per week at the time of separation from employment.

The claimant was laid off, when the employer discontinued the operation of its store.

At the time the claimant was laid off, she received severance pay in the amount of \$714.00, and a payment of a lump sum from her non-vested pension in the amount of \$1,003.12.

CONCLUSIONS OF LAW

The receipt of the severance pay does not bar the claimant from unemployment insurance benefits, because of the abolition of her job, due to the discontinuance of the store's operation. The claimant is, however, barred from receiving unemployment insurance benefits from January 25, 1983 to March 5, 1983, because she received a lump sum pension payment, which when prorated in accordance with the Statute, covers that period of time .

The claimant urges that this is a form of severance pay, and points to the fact that in a number of other local offices, payments were made to claimants who were in exactly the same circumstances as she is. The difficulty is that the Claims Examiner in the office where she filed her benefits correctly applied the Law, and must, therefore, be affirmed.

DECISION

The claimant received a lump sum, non-contributory pension payment, which when properly allocated disqualifies her from the receipt of benefits under Section 6 (g) of the Maryland Unemployment Insurance Law. The claimant is disqualified from receiving benefits for the week beginning January 25, 1983 and until March 5, 1983.


Martin A. Ferris
APPEALS REFEREE

Date of Hearing - 3/21/83
cd/5848
(1566/Haberkam)

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Claimant

Employer

Unemployment Insurance - Bel Air