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.: 841-BH-89

Date: Sept. 29 , 1989

Claimant: Virgil Chinn

Appeal No.: 8905622

S. S. No.:

Employer: Bedding Barn, Inc.

L.O. No.: 2

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 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 AT MIDNIGHT ON October 29, 1989

—APPEARANCES—

FOR THE CLAIMANT:

Virgil Chinn, Claimant

FOR THE EMPLOYER:

Employer not represented

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

EVALUATION OF 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 claimant was employed by Bedding Barn, Inc. from 1981 until March 28, 1989. On the latter date, the claimant became separated from that employment. His separation was not, however, due to a layoff or a shutdown of operations.

As a result of his years of employment, the claimant was entitled to a share in the employer's profit sharing plan. This is a plan whose contributions were made exclusively by the employer. The employer is under no obligation to distribute this money to the claimant until the claimant becomes 65, approximately 17 years from now. The employer may, however, distribute this profit sharing amount in a lump sum to the claimant as early as January of 1990. The employer, in fact, intends to distribute it to the claimant at the end of January or February of 1990. The amount is $5,800.

While the claimant worked, his total gross weekly remuneration was $615.38.

CONCLUSIONS OF LAW

The question in this case is whether the claimants lump sum profit sharing plan, to be distributed some time in the future, is a disqualifying pension within the meaning of Section 6(g) of the law.

Some things are clear. First, any pension deduction required would be a dollar for dollar deduction against benefits due, since the claimant did not contribute to the profit sharing plan and the employer financed the plan completely. In addition, the claimant's intention to roll over his profit sharing amount into another retirement plan or an I.R.A. is irrelevant, since this type of disposition of a profit sharing amount does not change the fact that it is deductible from benefits. Taylor v. Dept. of Employment & Training, 308 Md. 468 (1987).

The difficult question in this case is whether the claimant has received this amount within the meaning of Section 6(g). When the claimant applied for unemployment insurance benefits in March of 1988, he certainly had not received this profit sharing amount. At the time, its receipt was at least 10 to 11 months away, and possibly as much as 17 years away.

Section 6(g) is less than crystal clear on this issue. The general disqualification on Section 6(g)(1) only applies to "any week with respect to which the individual is receiving or has received" such an amount. When speaking of the different treatment of contributory and non-contributory pensions, however, Section 6(g)(1)(i) speaks of an amount "which an individual received or will receive with respect to a week. .." In Section 6(g) (3) (ii), there is a provision that lump sum payments of benefits shall be "allocated to a number of weeks following the date of separation according to the number of weeks of pay received at the individual's last pay rate."

These provisions are difficult to reconcile. The basic intent of the legislation is to prevent employers from being charged for the payment of unemployment benefits to their former employees while their former employees are at the same time receiving pensions paid for by that same employer. This is a simple enough matter where the former employee receives a continuing weekly or monthly pension. Where lump sums are involved, however, difficulties arise. Section 6(g) (3)(ii) is meant to protect an employer who pays a pension or similar payment to the employee in a lump sum amount. In such a case, a lump sum is effectively spread over a number of weeks, and the claimant is disqualified from unemployment insurance benefits for that number of weeks.

The difficulty in this case arises because the lump sum is payable not at or anywhere near the actual time of unemployment. The agency argues that since there is no statutory limit on this disqualification, the fact that a claimant is going to receive a lump sum at any time, even 17 years in the future, disqualifies him from unemployment insurance benefits at the present time. Since the Board wishes to avoid this clearly absurd result, it will interpret the statute as follows in this situation. Where a claimant is entitled to a lump sum payment that is not due upon the actual beginning of the period of unemployment, that lump sum payment should be "allocated to a number of weeks following the date of separation," but beginning only with those weeks for which the lump sum is actually payable.

If the lump sum is not payable for eleven months after the last day of work, the allocation should begin in the eleventh month. This does not mean that an administrative delay in the actual payment of a lump sum already due should cause a corresponding delay in the application of a 6(g) penalty. It does mean that the lack of entitlement to receive a lump sum payment prohibits the application of a 6(g) penalty, and that any allocation of a penalty resulting from a lump sum payment which is not due to a claimant at the time of separation should begin on the date of entitlement to receive the lump sum.

In the case of Hockett v. Cropper Brothers Lumber Company (799-BR-88), the Board ruled that a claimant who is not eligible for any profit sharing or pension lump sum payments until 18 months after the date of separation is not disqualified under Section 6(g) from benefits claimed at or near the date of separation. In that case; the Board stated that the provisions of Section 6(g) (3)(ii) "were not intended to deny benefits where lump sums were not paid at all in any way relevant to the relief of current economic distress."

DECISION

The claimant's potential future receipt of a lump sum profit sharing amount in the year 1990 is not allocable to weeks of unemployment prior to the date of receipt of the lump sum, under Section 20(g) (3)(ii) of the Maryland Unemployment Insurance Law. No disqualification is imposed on the claimant under Section 6(g) of the law based upon this profit sharing amount for any weeks of claims prior to the receipt of the lump sum.

The decision of the Hearing Examiner is reversed.

The claimant may contact his local office concerning the other eligibility requirements of the law.

Thomas W. Keech
Chairman

Hazel A. Warnick
Associate Member

Donna P. Watts
Associate Member

K:W:W
kbm

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21201
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— DECISION —

Date: Mailed: 6/6/89

Claimant: Virgil H. Chinn

Decision No.: 8905622

S.S. No.:

Employer: Bedding Barn, Inc.

L.O. No.: 2

Appellant: Claimant

Issue: Whether the claimant is receiving or has received a govermental 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 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 June 21, 1989

-APPEARANCES-

FOR THE CLAIMANT:

Claimant-Present(telephonically)

FOR THE EMPLOYER:

Richard Nesbitt,
Vice President
Present at
telephonic hearing

FINDINGS OF FACT

The claimant worked for Bedding Barn, Inc., from 1981 until March 28, 1989. As of the day of his separation from emloyment, the claimant was earning $328.13 gross weekly salary. The claimant is to receive $58,000 approximately from a profit sharing plan paid for entirely by the employer. There was no layoff or shutdown of operation.

CONCLUSIONS OF LAW

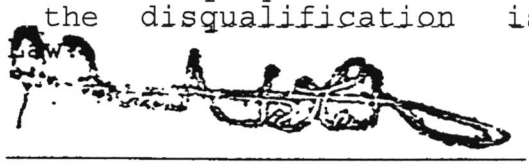
Section 6(g) of the Maryland Unemployment Insurance Law requires that if an individual receives *or* will recive from the base period employing unit for which he performed services, any monies from a profit sharing plan or ther similar plan, then these monies are totally deductible from his unemployment insurance benfits.

It is recognized that the monies are vested and the exact amount of money that the claimat will receive in the future from the profit sharing plan has to be in excess of $5,800, since the amount that he is vested will draw interest. When a lump sum payment of a profit sharing plan is paid, it shall be allocated to the number of weeks following the date of separation from employment, according to the number of weeks of pay received at the individuals last pay rate.

DECISION

The claimant will receive monies in the form of a profit "sharing plan from the base period employing unit which is disqualifying under Section 6(g) of the Maryland Unemployment Insurance Law. Benefits are denied from March 29, 1989, until July 31, 1989.

While the determination of the Glen Burnie Unemployment Insurance Administration office is affirmed, the disqualification is modified in accord with the Maryland law.



J. Martin Whitman
Hearing Examiner

Date of hearing: 5/25/89
rsb/Specialist ID:02424
Cassette #4466
Copies mailed on 5/6/89 to:

Claimant
Employer
Unemployment Insurance-Glen Burnie(MABS)

Date of Hearing: August 29, 1989

COPIES MAILED TO:

CLAIMANT

EMPLOYER

UNEMPLOYMENT INSURANCE - GLEN BURNIE