



# Maryland

## Department of Economic & Employment Development

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*Board of Appeals*  
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**- D E C I S I O N -**

Decision No.: 1522-BH-93

Date: Sept. 16, 1993

Claimant: Robert D. Kimmel, Sr.

Appeal No.: 9306377

S.S. No.:

Employer:

L. O. No.: 40

Appellant: BOARD ASSUMED  
JURISDICTION

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 8-1008 of the Labor and Employment Article.

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**- 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 appeal can be found in many public libraries, in the *Annotated Code of Maryland, Maryland Rules*, Volume 2, B rules.

The period for filing an appeal expires

October 16, 1993

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**- A P P E A R A N C E S -**

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Robert Kimmel - Claimant

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT  
John T. McGucken - Legal Counsel

## EVALUATION OF THE 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 had been employed by Crown, Cork and Seal as a tool and die setter from September, 1959 through November 13, 1992. At that point, the plant closed down permanently, ending his job.

The claimant was entitled to a non-contributory pension in the amount of \$928.99 per month effective February 1, 1993.

The claimant was divorced on September 12, 1990. According to the divorce settlement agreement, which was incorporated into the court's order, the claimant's wife became an alternate payee of the pension plan. The claimant's wife thus became entitled to 40% of the claimant's benefits at the time that they were received by the claimant. The claimant's wife also became entitled to the status of surviving spouse in the event that the claimant died.

The claimant's wife, however, does not own 40% of the claimant's pension. The pension is paid in full to the claimant, and the claimant then remits 40% of the amount to his ex-wife. The claimant's ex-wife's entitlement to the benefits is dependent upon the claimant's status. For example, should the claimant die, the claimant's wife would not continue to receive the 40% share ordered by the court, but would instead receive a surviving spouse's benefit in an amount set under the plan.

## CONCLUSIONS OF LAW

The entire amount of this pension is deductible under Section 8-1008 of the Labor and Employment Article. Title to the pension, or even a part of the pension, was not transferred to the claimant's wife. The pension is still paid to the claimant in full. He has a court obligation to pay the 40% of the pension to his wife, but it remains his pension. The claimant's wife does not have independent ownership of any pension amount. Her ownership and status are dependent upon the claimant's interest in the pension. For these reasons, the Board concludes that the claimant actually receives 100% of the pension amount. The 40% which the claimant must pay to his ex-wife is a legal obligation which he fulfills from this pension amount, but it does not represent the wife's independent ownership of that 40% of the pension. Therefore, the entire amount of the pension must be deducted.