



STATE OF MARYLAND
 HARRY HUGHES
 Governor

RUTH MASSINGA
 Secretary

DEPARTMENT OF HUMAN RESOURCES

EMPLOYMENT SECURITY ADMINISTRATION
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 Baltimore, Maryland 21201
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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.


Associate Member


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