

 **Maryland**
Department of Economic &
Employment Development

William Donald Schaefer, Governor
J. Randall Evans, Secretary

Board of Appeals
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Baltimore, Maryland 21201
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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

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

FOR THE EMPLOYER:

Employer not
represented

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 claimant's 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).