

Maryland

DEPARTMENT OF ECONOMIC AND EMPLOYMENT DEVELOPMENT

BOARD OF APPEALS

Thomas W. Keech
Chairman

1100 North Eutaw Street
Baltimore, Maryland 21201
(301) 333-5033



William Donald Schaefer, Governor
J. Randall Evans, Secretary

Decision No.: 845-BR-87
Date: NOV. 30, 1987
Claimant: Theresa Thompson Appeal No.: 8704958
S. S. No.:
Employer: Hutzler Brothers Co. LO. No.: 40
Appellant: CLAIMANT

Issue: Whether the claimant is receiving or has received a pension or other similar periodic payment 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, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT ON December 30, 1987

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals reverses the decision of the Hearing Examiner.

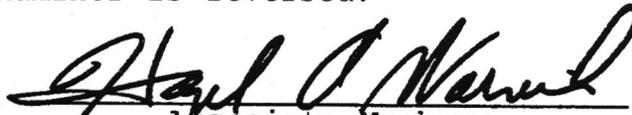
First, the Board notes that the proper issue in this case, dealing with a pension disbursement, is Section 6(g) and not Section 6(h) (which deals only with severance pay).

Second, the Hearing Examiner correctly reversed the Claims Examiner's determination that the \$2,876.13 pension disbursement, received by the claimant in July, 1986, six months before she was separated from the employer, was deductible from unemployment insurance benefits. However, he incorrectly concluded that the \$366.55 lump sum repayment of her own contribution to the new pension plan was deductible from unemployment insurance benefits. That sum was the total of the money she had put into the plan. The receipt of a lump sum amount representing a worker's own retirement contributions is not the receipt of a pension within the meaning of Section 6(g) of the law. McCauley v. FSA, National Archives and Record Service (694-SE-84). Since there is no contribution made by the employer, this amount does not fall under Section 6(g) of the law.

DECISION

The claimant did not receive a pension or other similar periodic payment within the meaning of Section 6(g) of the Maryland Unemployment Insurance Law. No disqualification is imposed under this section of the law.

The decision of the Hearing Examiner is reversed.


Associate Member


Chairman

W:K
kbm

¹Since the Board finds that the money the claimant received does not fall under Section 6(g), the issues raised by the 1987 amendments to Section 6(g), discussed at length by the Board in Glassman, et al. v. Pirelli Cable Corp., 466-BH-87, need not be reached.

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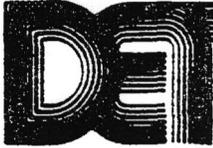
CLAIMANT

EMPLOYER

GAB Business Services

Judy-Lynn Goldenberg, Esq.

UNEMPLOYMENT INSURANCE - EASTPONT



DEPARTMENT OF EMPLOYMENT AND TRAINING

STATE OF MARYLAND
1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

(301) 383-5040

STATE OF MARYLAND
William Donald Schaefer
Governor

BOARD OF APPEALS

THOMAS W. KEECH
Chairman
HAZEL A. WARNICK
Associate Member
SEVERN E. LANIER
Appeals Counsel
MARK R. WOLF
Chief Hearing Examiner

DECISION

Claimant: Theresa A. Thompson
Date Mailed: 7/1/87
Appeal NO.: 8704958
Employer: Hutzler Brothers Co.
L.O No.: 40
Appellant: Claimant

Issue: Whether the claimant's benefits should be reduced by dismissal payments as defined in Section 4(b) 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 July 16, 1987

APPEARANCES

FOR THE CLAIMANT

Claimant-Present

FOR THE EMPLOYER

Judy-Lynn Goldenberg
Esquire, GAB
Business Services;
Hanna Mazo-
Personnel Manager;

Other: Joseph Manz-
Claims Specialist Supervisor

FINDINGS OF FACT

The claimant has a benefit year effective January 11, 1987. The claimant was employed with Hutzler Brothers of Baltimore, Maryland on August 16, 1967. She was performing duties as a Salesperson at the Inner Harbor store on a part-time basis at \$4.20 per hour at the time of her separation on January 9, 1987.

The testimony reveals that the claimant has worked part-time for twenty years. She was working three days per week; Monday, Tuesday and Wednesday for a total of twenty hours.

The claimant and all other employees were notified that the store would be closing as of December 31, 1986. The claimant did work the next two weeks getting stock ready for the other stores.

The claimant was offered a job at the Lexington Street location. She was given twenty hours of work, but the days were Monday and Friday and every other Saturday in daytime hours, and every other Thursday in the evenings. This was a total of twenty hours, which is the same number of hours that the claimant had been working for the past twenty years, but she did not like the hours. She objected to the Thursday evening hours and every other Saturday. However, the Thursday and Saturday were alternated every other week and in all of the other stores where she could have been placed Saturdays and evening work is mandatory. Since the claimant did not like the hours, she did not avail herself of the job and, therefore, took early retirement. In June 1986, all pensions became due under the old non-contributory pension plan that the employer had. As a result, the claimant received \$2,876.13 in a lump sum payment. At that time, the employees were offered three alternatives, and the claimant chose a new contributory plan where she paid three percent and this was matched by the employer. When she took her retirement on January 9, 1987, the claimant received the pension that was due from July 1986 until January 9, 1987, which was \$366.55. This was not severance pay, nor was it vacation, since the claimant was paid for her vacation in addition to this amount. The \$366.55 represents the pension portion that the claimant contributed to between July 1986 and January 1987. The claimant has remained unemployed from January 9, 1987 to the present.

CONCLUSIONS OF LAW

It is concluded from the testimony that the \$366.55 which the

claimant received on January 9, 1987 constitutes pension and is not severance pay. Therefore, the determination of the Claims Examiner under Section 6(h) of the Law is reversed.

DECISION

The claimant is in receipt of a pension in the amount of \$366.55. She is disqualified from receiving benefits for the week beginning January 11, 1987 to January 17, 1987. The determination of the Claims Examiner under Section 6(h) of the Law is reversed.



William R. Merriman
Hearing Examiner

Date of hearing: 6/22/87
Cassette: 3281
hf (Specialist ID : 40308

Copies mailed on 7/1/87 to:

Claimant
Employer
Unemployment Insurance - Eastpoint-(MABS)

Judy-Lynn Goldenberg,