

BEFORE THE
STATE OF WISCONSIN

LABOR AND INDUSTRY REVIEW COMMISSION

In the matter of the
unemployment benefit claim of

MICHAEL A RAUTH, Claimant

Hearing No. 92608906MW

SEE ENCLOSURE AS TO TIME
LIMIT ON FURTHER APPEAL.

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Pursuant to the timely petition for review filed in the above-captioned matter, the commission has considered the petition and all relief requested. The commission has reviewed the applicable records and evidence and finds that the appeal tribunal's findings of fact and conclusions of law are supported thereby. The commission therefore adopts the findings and conclusions of the appeal tribunal as its own.

DECISION

The decision of the appeal tribunal is affirmed. Accordingly, the claimant's weekly benefit rate as of week 39 of 1992, is reduced by an amount \$70.83, but not below zero.

Dated and mailed

December 15, 1993
145-1068

/s/

Pamela I. Anderson, Chairman

/s/

Richard T. Kreul, Commissioner

/s/

James R. Meier, Commissioner

MEMORANDUM OPINION

In his petition for commission review, the claimant asserts that his social security disability payments under Title II were not pension payments for purposes of sec. 108.05 (7) (a), Stats., because those disability payments are not based on his previous work. However, his disability insurance payments are premised on some work during some calendar quarter preceding the finding of disability. The department's policy, as stated in the Unemployment Compensation Manual, Part VII, Chapter 6, page 29, states that "social security disability payments qualify as pension payments because the amount received is based on work performed."

The claimant argues that his disability payments are not similar to the listed pension payments because those payments envision permanent withdrawal from the work force unlike his disability payments which is paid regardless of whether the claimant worked. However, the same argument can be made for other kinds of wage substitutes, such as workers compensation temporary disability payments, however, such wage substitutes are treated in other sections of the statutes. Historically the US Department of Labor has treated SSI and dependent's allowance as not based on previous work and therefore as not reducing the weekly unemployment compensation benefit amount. Unemployment Insurance Program Letters No. 43-80 at p.3 and 24-80.

The commission sympathizes with the claimant's position, but unfortunately cannot reverse the appeal tribunal decision. To find his disability payments did not reduce his unemployment compensation benefits would be to depart from the department's longstanding position. Unemployment Insurance Program Letter 22-87, April 30, 1988 does indicate that "primary social security, old age and disability retirement benefits are to be used to reduce the weekly benefit amount. Thus, the Department of Labor clearly meant payments such as those received by the claimant would reduce the weekly benefit amount, which is consistent with both the department's policy and with the general framework of the unemployment compensation statutes, the commission must affirm the decision of the administrative law judge.

cc: ATTORNEY DONALD P OMEARA
MITCHELL BAXTER & ZIEGER