

The reduction was made because the Michigan Employment Security Commission determined that appellant had paid for less than half the "cost of the benefit" (i.e., his pension supposing he lived out his full life expectancy). Under the law as it then stood, appellant's unemployment benefits were to be reduced if he paid for less than half the "cost of the benefit". They were not to be reduced if he paid for half, or more of the "cost of the benefit".

No where in the Michigan Employment Security Act is the phrase "cost of benefit" defined. The burden of proving appellant contributed less than one-half of the "cost of benefit" of his pension was on the appellant and the burden has not been met.

The MESSC determined that the term "cost of the benefit" is to be defined as the ultimate "value of the pension". It is undisputed that that appellant paid \$14,424.00 towards his pension. It is undisputed that the actuarial total value of appellant's pension is \$134,000.00. (Monthly benefit x life expectancy = total value of pension.)

The total actual value may be greater or lesser depending on appellant's actual life span and of his wife who will receive monthly benefits for life should appellant predecease her. Appellee seeks recovery of \$1,287.00 paid appellant.

Appellant raises several theories on appeal to this Court, only one of which will be discussed. Appellant claims that he contributed one-half of the "cost of the benefit"; therefore, there should be no reduction in his unemployment benefits. The issue is the correct definition and application of the "cost of benefit" rule.

Appellant would limit the term only to what the employer and employee paid into his pension, that is, what was actually paid in at the time of his retirement.

This Court finds the MES Board interpretation, as a matter of law, to be error.

Neither party to this action has made an outlay or expenditure equal to the possible or actuarial value of the pension. The employer stated on the record that it was not contesting the fact that it paid only one-half of the amount into the retirement fund while the employee paid the remaining half.

The Board of Review is correct when it states "viewed actuarially the cost may be \$134,000.00." Actuarial value is not, however, the "cost" basis to reduce appellant's unemployment benefits per Section 27(f) of the Michigan Employment Security Act.


The ultimate value of the pension may be \$134,000.00 but the actual cost, that is, the amount paid, as shown by the record is \$28,848.00, of which the employer and employee have each paid one-half plus the interest which their contributions have and will earn. This is no showing that any other "costs" had been actually paid into the fund. Thus "cost" is what both employer and employee contributed.

That the amount actually contributed by both parties plus interest may not be sufficient to pay the ultimate possible pension benefits that might be received by appellant and that any such contingent balance may have to come from other sources (the amount of which is now indeterminate and may be nothing) does not make such contingent balance a "cost of benefit" in determining and reducing the amount of unemployment benefits to which appellant otherwise is entitled.

This Court interprets the statutory use of the word "costs" in its plain and ordinary meaning, that is, the amount actually spent for something (perhaps of much greater value) which the record here establishes is the \$28,848.00 contributed equally by both employer and employee, plus interest which these contributions otherwise would or actually did earn.

No costs, a public question being involved. Appellant counsel will prepare an appropriate order for this Court's signature.

DATED: May 12, 1983



CHESTER J. BYRNS
CIRCUIT JUDGE

STATE OF MICHIGAN
EMPLOYMENT SECURITY BOARD OF REVIEW

In the Matter of the Claim of

ALLEN A. HORNEY,

Appeal Docket No. UCF80-16132-75134

Claimant

Social Security No. [REDACTED]

U. S. POST OFFICE,

Employer

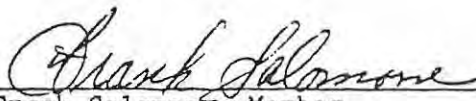
ORDER DENYING APPLICATION FOR REHEARING

This case is before the Board of Review upon application of the claimant for a rehearing by the Board in respect to its decision dated July 26, 1982. The Board of Review, having read and considered said application, and having reviewed the record in the matter, is of the opinion that said application should be denied.

IT IS THEREFORE ORDERED that said application shall be and the same is hereby denied.



Morris W. B. Cohl, Member



Frank Salomon, Member

MAILED AT DETROIT, MICHIGAN September 9, 1982

This order will become final unless a written appeal therefrom is RECEIVED by the clerk of the appropriate circuit court on or before

September 29, 1982

TO PROTECT YOUR RIGHTS YOU MUST BE ON TIME.