

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the tribunal is erroneous in point of law. I set aside the decision of the tribunal and, since I consider it expedient to do so, I substitute my own decision, which is that jobseeker's allowance is not payable to the claimant for a period of one week from 10 June 1998.

2. The claimant in this case objects to the provision of jobseekers' employment programmes by private, profit-making companies. Having been in receipt of jobseeker's allowance since 14 April 1997, the claimant was informed in 1998 that he was to be enrolled on a "Jobplan workshop", run by the company which was the only provider of employment programmes in the claimant's area. On 22 April 1998 the claimant wrote to the manager of his Jobcentre stating that he was very concerned that his personal details would be made available to the company, but expressing his support for the 1 2 1 programme and his willingness to attend an internal Employment Service scheme. His letter concluded:

"...I decline to countenance a scheme organised by a private, profit driven, company which clearly involves exposure of my personal details to a limited company."

3. Having referred the matter to Employment Service Head Office, the Jobcentre manager replied to the claimant's letter on 27 April 1998, stating that the Employment Service was charged by Government with delivering its programmes through partnerships with private organisations, and that in order to ensure continued compliance with the Data Protection Act the Department's policy was that all providers should have a written contract with the Employment Service. His letter continued:

"The contract with the provider should restrict the use of the data passed to them and emphasise the necessity of maintaining the levels of confidentiality required by the Data Protection Act.

The Data Protection Act requires us to explain to clients why we are collecting data about them, what we will do with it and who we will disclose it to. Having met these obligations we are allowed to pass the information to the bodies we have declared in our registrations as being necessary to disclose to as part of our business.

If you are unwilling to accept this explanation of our position you have the right to take your complaint to the Data Protection Registrar's Office.

I have asked your adviser to call you in to the Jobcentre to re-submit your details to the programme centre."

4. On 5 May 1998 the claimant was told that his referral to the Jobplan workshop would proceed, and that he would be required to attend the course from 11 May 1998 to 15 May 1998. The claimant repeated that he did not want his personal details passed to the company and that, as this was a necessary part of the referral programme, he would not attend. The claimant did not attend the course, and on 5 June 1998 the adjudication officer made a decision reviewing the decision awarding the claimant jobseeker's allowance on the ground that the claimant's failure to accept the place on the Jobplan Workshop constituted a relevant change of circumstances, and revising the award so as to provide that jobseeker's allowance was not payable from 10 June to 23 June 1998.

5. The claimant appealed against the review decision, reiterating his objection to his personal details being passed to a private company. The claimant also stated that he had

referred the matter to the Data Protection Registrar, and complained that the decisions of the Employment Service had pre-empted the results of the Data Compliance Officer's investigations.

6. On 18 September 1998 that tribunal dismissed the claimant's appeal. In his letter requesting a statement of reasons, the claimant stated that he had been informed by the Data Protection Registrar's investigating officer that the training provider had not been registered and, after referring to that letter, the chairman stated that the tribunal had considered that the carrying out of the data protection investigation was not a reason for delaying the appeal. The tribunal considered that the only basis for holding that the claimant had good cause not to attend the course was that his failure to participate in the training scheme resulted from a religious or conscientious objection sincerely held (regulation 73(2)(b) of the Jobseeker's Allowance Regulations 1996). The tribunal stated that that provision applied where the objection was to the content of a particular course, rather than to a general refusal to undertake any course run by a private contractor, but the chairman observed that the meaning of "conscientious objection" was a matter of surmise, and indicated that leave to appeal would be granted if it was sought.

7. The claimant duly appealed against the tribunal's decision with the chairman's leave. The adjudication officer, in a submission dated 7 September 1999, supported the appeal on the ground that the tribunal had wrongly limited "good cause" to the grounds specified in sub-paragraphs (a) to (j) and had not considered whether the claimant's reasons for not attending the course were other circumstances in which he might be regarded as having good cause for not attending. The adjudication officer suggested that it would also help the next tribunal if the claimant were to supply details of the outcome of his complaint to the Data Protection Registrar, as germane to his refusal to attend the employment programme. On 6 December 1999 Mr Commissioner Heald, in allowing the appeal under section 14(7) of the Social Security Act 1998, directed the new tribunal to consider the contents of that submission.

8. At a rehearing of the appeal on 29 November 2000, which the claimant did not attend, the single member tribunal (a district chairman) dismissed the appeal. In the Statement of Reasons, the chairman set out the history of the case and, after expressing the view that the case should not have been referred for rehearing, continued:

"The appellant argues that he is not prepared to go to an employment programme operated by a private company because he doesn't want his personal details disclosed to a private company but he will be prepared to go to one provided it was run directly by the Employment Services.

The question before me is whether this was reasonable. I do not consider it was. There are innumerable functions formerly carried out directly by the state and its civil servants which have now been put out to tender operated by private companies. These involve the passing to such companies personal information about members of the public. For this reason there have been strict and clear guide lines laid down in Regulations to protect members of the public so that their details cannot be used by anybody or for any purpose which is not authorised. We all have to accept as members of a society that those functions are and will continue to be carried out by private companies. It is clearly unreasonable in the present social climate for objections to be made on the basis set out in (the claimant's) appeal. I therefore dismiss the appeal and confirm the decision of the Adjudication Officer."

9. The claimant sought leave to appeal to the Commissioner, making essentially the same points as previously, but also enclosing correspondence in support of his contention that the training provider had illegally retained personal data about him on their computer system.

A different district chairman from the one who heard the appeal refused leave to appeal on 21 May 2001, but on 2 October 2001 I granted leave to appeal. In a submission dated 23 October 2001 the Secretary of State's representative supported the appeal, but submitted that I should substitute for the tribunal's decision my own decision to the same effect.

10. Before considering those issues, it is necessary to deal with a preliminary matter. Regulation 58(6) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (in the form applicable to this case) require an application for leave to appeal to be determined by a legally qualified panel member "where in any case it is impracticable, or would be likely to cause undue delay for an application for leave to appeal against a decision of an appeal tribunal to be determined by the person who was the chairman, or in the case of a tribunal which has only one member, the member, of that tribunal." In his application to the Commissioner for leave to appeal, the claimant drew attention to the fact that leave to appeal had been refused by a different chairman from the chairman who heard the appeal. There is no evidence that determination of the application by the panel member who heard the appeal was impracticable or would have led to undue delay.

11. Although it was held in *CIB/227/2000* that a grant of leave by a panel member other than the chairman or single member of the tribunal which heard the appeal was invalid in the absence of any explanation as to why regulation 58(6) applied, that decision was not followed by Mr Commissioner Rowland in *CIS/472/2000*. In *CIB/227/2000* there was an indication of a general practice of referring all applications for leave to appeal to a full-time legally qualified panel member, but in *CIS/472/2000* the Commissioner held that if there was no such practice, a panel member exercising the power conferred by regulation 58(6) should be presumed to be acting within that power in the absence of any evidence to the contrary. I agree with that decision and, accordingly, I consider that I have jurisdiction to determine this appeal.

12. Section 19 of the Jobseeker's Act 1995, so far as material, provides:

"(1) Even though the conditions for entitlement to a jobseeker's allowance are satisfied with respect to a person, the allowance shall not be payable in the circumstances mentioned in subsection (5) or (6)

(2) If the circumstances are any of those mentioned in subsection (5), the period for which the allowance is not to be payable shall be such period (of at least one week but not more than 26 weeks) as may be prescribed.

(3)...

(4)...

(5) The circumstances referred to in subsections (1) and (2) are that the claimant-

(a) has, without good cause, refused or failed to carry out any jobseekers' direction which was reasonable, having regard to his circumstances;

b) has, without good cause-

(i) neglected to avail himself of a reasonable opportunity of a place on a training scheme or employment programme;

- (ii) after a place on such a scheme or programme has been notified to him by an employment officer as vacant or about to become vacant, refused or failed to apply for it or to accept it when offered to him;
 - (iii) given up a place on such a scheme or programme;
 - (iv) failed to attend such a scheme or programme on which he has been given a place; or
- (c) has lost his place on such a scheme or programme through misconduct.
- (6)...
- (7)...
- (8) Regulations may-
- (a) prescribe matters which are, or are not, to be taken into account in determining whether a person-
 - (i) has, or does not have, good cause for any act or omission;
 - (ii) has, or does not have, just cause for any act or omission; or
 - (b) prescribe circumstances in which a person-
 - (i) is, or is not, to be regarded as having, or not having, good cause for any act of omission; or
 - (ii) is or is not, to be regarded as having or not having just cause for any act or omission.
- (9)...
- 10..."

The circumstances which may constitute "good cause" for the purposes of section 19(5)(b) are set out in regulation 73 of the Jobseeker's Allowance Regulations 1996:

"(1) This regulation shall have effect for the purposes of section 19 (circumstances in which a jobseeker's allowance is not payable)

(2) Without prejudice to any other circumstances in which a person may be regarded as having good cause for any act or omission for the purposes of section 19(5)(b), a person is to be regarded as having good cause for any act or omission for those purposes if, and to the extent that, the act or omission is attributable to any of the following circumstances-

- (a) the claimant in question was suffering from some disease or bodily or mental disablement on account of which -
 - (i) he was not able to attend the relevant training scheme or employment programme in question;
 - (ii) his attendance would have put at risk his health; or
 - (iii) his attendance would have put at risk the health of other persons;
- (b) the claimant's failure to participate in the training scheme or employment programme resulted from a religious or conscientious objection sincerely held;
- (c) the time it took, or would normally have taken, for the claimant to travel from his home to the training scheme or employment programme and back to his home by a route and means appropriate to his circumstances and to the scheme

- or programme exceeded, or would normally have exceeded, one hour in either direction or, where no appropriate training scheme or employment programme is available within one hour of his home, such greater time as is necessary in the particular circumstances of the nearest appropriate scheme or programme;
- (d) the claimant had caring responsibilities and-
- (i) no close relative of the person he cared for and no other member of that person's household was available to care for him; and
 - (ii) in the circumstances of the case it was not practical for the claimant to make other arrangements for the care of that person;
- (e) the claimant was attending court as a party to any proceedings, or as a witness or as a juror;
- (f) the claimant was arranging or attending the funeral of a close relative or close friend;
- (g) the claimant was engaged in-
- (i) the manning or launching of a lifeboat; or
 - (ii) the performance of duty as a part-time member of a fire brigade;
- (h) the claimant was required to deal with some domestic emergency; or
- (i) the claimant was engaged in emergency duties for the benefit of others;
- (j) the claimant gave up a place on a training scheme or an employment programme and if he had continued to participate in it he would have, or would have been likely to have, put his health and safety at risk.

(2)A....

(2)B...

(3)...

(4)''

13. As the Secretary of State's representative pointed out in the submission of 7 September 1999, the specific circumstances in which a claimant is to be regarded as having good cause for any relevant act or omission under regulation 73 are "without prejudice to any other circumstances in which a person may be regarded as having good cause". In applying regulation 73, it is therefore first necessary to consider whether the relevant act or omission is attributable to any of the circumstances specifically mentioned in regulation 73(2), in this case a sincerely held conscientious objection. If not, it then becomes necessary to decide whether the act or omission is attributable to any other circumstances which can be regarded as "good cause". The tribunal did not deal with the question of whether the claimant's objection to attending the employment programme could be considered a conscientious objection, even though that point had been specifically raised by the first tribunal chairman. If the claimant's reason for not attending the programme was not a conscientious objection, it was necessary for the tribunal to decide if there was some fact or circumstance which would probably would have caused a reasonable person in the claimant's position to act as he did, in order to decide whether there were other circumstances in which the claimant could be regarded as having "good cause" for not attending the programme. The tribunal dealt with those separate issues simply by considering whether the claimant's objection to attending the course was reasonable, and appears to have decided that it was not reasonable solely on the

basis of its own opinion of the claimant's views. The tribunal's decision was therefore erroneous in point of law and must, accordingly, be set aside. Since the genuineness of the claimant's views has not been challenged and none of the other facts are in dispute, I agree with the Secretary of State's submission that it is appropriate for me to substitute my own decision for that of the tribunal.

14. The question of what constitutes a conscientious objection arose under the unemployment benefit legislation, which was of course the predecessor of jobseeker's allowance. Although that legislation did not expressly refer to religious or conscientious objections, it was held in a number of cases that such objections could nevertheless constitute "good cause" for the purpose of escaping disqualification from benefit. Thus, in *C.U. 25/61* a Christian who refused to work on Sundays was held to have good cause for voluntarily leaving his employment, as was a Jewish claimant who refused to work on Saturdays (*C.U. 443/51*). Those cases were referred to by Chief Commissioner Micklethwait in *C.U. 14/68*, in which it was held that a claimant who was a vegetarian had good cause for refusing work as a secretary for a company which manufactured sausages and meat pies.

15. In each of the unemployment benefit cases to which I have referred there was an obstacle to the claimant's compliance with the relevant requirement resulting from a conviction or belief which formed part of a recognisable religious, ethical or moral code. In the leading case *C.S. 371/49* it was held that "good cause" is some fact which, having regard to all the circumstances, would probably have caused a reasonable person to act as the claimant did. In most cases the relevant fact for 'good cause' purposes will be an event, or series of events, rather than a state of mind, but the unemployment benefit cases establish that a religious, ethical or moral conviction may make it reasonable for a claimant to refuse to comply with a relevant requirement.

16. I consider that the 'religious or conscientious objection' exemption was almost certainly included in regulation 73 to apply the principles in the unemployment benefit cases to jobseeker's allowance, and that the provision was not intended to extend exemption from sanctions beyond the types of case in which exemption from disqualification had been permitted under the unemployment benefit legislation. I agree with the examples given in the Decision Maker's Guide of the types of objection which are within the scope of the regulation, such as objections to employment involving the handling of tobacco or alcohol, religious objections to Sabbath working, objections to working with equipment which can be used to destroy animal or human life and religious objections to working with employees of the opposite sex.

17. The claimant's objections do not seem to me to fall into the same category. A principled objection is not the same as a conscientious objection, and although the claimant objects to the provision of employment programmes by private organisations and to the disclosure of his personal details to a private company, he has not stated that his attendance at the training course would have required him personally to act in a way which was contrary to his ethical or moral principles. I therefore do not consider that the claimant's reasons for not attending the training programme amounted to a conscientious objection.

18. It is therefore necessary to decide whether the claimant's reasons for not attending the training course amounted to 'other circumstances' in which he could be regarded as having good cause for refusing to attend. I do not consider that 'good cause' resulting from a state of mind is necessarily restricted to religious or conscientious objections, although other

instances will be very rare. However, there may be exceptional cases where a claimant's state of mind presents such an obstacle to compliance with a requirement under section 19 that it is reasonable for the claimant to refuse to comply with the requirement, for example, for reasons of modesty, or if a claimant has a particular fear of carrying out a task required by a direction. It is clear from *C.S. 371/49* that the relevant state of mind must exist as a fact independently of the claimant's refusal to carry out the direction and, if the claimant's refusal to comply with a requirement does not arise from religious, ethical or moral convictions, it will be correspondingly more difficult for the claimant to satisfy the decision maker that there is good cause for the refusal. For the reasons given above, I do not consider that the claimant's objections to certain features of the jobseeker's allowance scheme did prevent him in any way from complying with the jobseeker's direction and, accordingly, I do not consider that he had good cause for not complying with the direction.

19. I do not consider that the claimant can escape sanctions because of any failure by the training provider to comply with the requirements of the Data Protection Act. Section 19(5)(a) of the 1995 Act imposes sanctions in respect of a refusal or failure to comply with a jobseeker's direction "which was reasonable", and the question of a contractor's compliance with its statutory and contractual obligations might have been relevant if a jobseeker's direction had been given under that paragraph. However, in this case sanctions were imposed in respect of a failure to accept a place on a training programme under section 19(5)(b)(ii), which makes no reference to the requirement being reasonable. The claimant can therefore escape sanctions only if he can show good cause for his refusal to attend the course.

20. For the reasons I have given, I do not consider that the claimant has established good cause for refusing to attend the Jobplan workshop. However, in recognition of the fact that the claimant's concerns about the training provider's failure to comply with its statutory and contractual obligations under the Data Protection Act have proved justified, I reduce the period of disqualification to the minimum period allowed by section 19(2), that is to say, a period of one week.

(Signed) **E A L Bano**
Commissioner

30 September 2002