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THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case No: CJSA/5600/1997

**SOCIAL SECURITY ADMINISTRATION ACT 1992
JOBSEEKERS ACT 1995**

**APPEAL FROM A DECISION OF A SOCIAL SECURITY APPEAL TRIBUNAL
ON A QUESTION OF LAW**

DECISION OF THE SOCIAL SECURITY COMMISSIONER

COMMISSIONER: MR J MESHER

Claimant: S

Tribunal: F

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DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. The claimant's appeal is allowed. The decision of the Hull social security appeal tribunal dated 17 July 1997 is erroneous in point of law, for the reasons given below, and I set it aside. The appeal against the adjudication officer's decision is referred to a differently constituted social security appeal tribunal for determination in accordance with the directions given in paragraphs 14 and 15 below (Social Security Administration Act 1992, section 23(7)(b)).

2. The appeal tribunal, at a "paper hearing", confirmed the adjudication officer's decision imposing a sanction of loss of two weeks' benefit, from 5 December 1996 to 18 December 1996 (inclusive), under section 19(1) and (5) of the Jobseekers Act 1995 for failure to attend an employment programme on which the claimant had been given a place. The type of employment programme involved was Project Work. That does not come within the ordinary meaning of "employment programme" for the purposes of section 19, set out in regulation 75 of the Jobseekers' Allowance Regulations 1996. However, Project Work was brought within the meaning of "employment programme" in certain circumstances by regulation 4 of the Jobseekers' Allowance (Pilot Scheme) Regulations 1996 ("the JSA Pilot Scheme Regulations").

3. The claimant now appeals against the appeal tribunal's decision, with my leave. His appeal is supported by the adjudication officer now concerned, in the submission dated 12 May 1998. I am not entirely sure whether the claimant wished there to be an oral hearing of his appeal. If he did, I refuse the request as I am satisfied that the appeal to the Commissioner can be properly determined without a hearing.

4. I agree with the adjudication officer that the appeal tribunal erred in law in the way set out in paragraphs 11 and 12 of the submission of 12 May 1998. I do not agree that it erred in the way set out in paragraph 13: there was no evidence suggesting that good cause of the kind mentioned in regulation 5 of the JSA Pilot Scheme Regulations might exist and therefore no need for the appeal tribunal to consider that regulation.

5. The submission of 12 May 1998 has quoted much of the relevant legislation. I shall not repeat that, but shall attempt to explain as simply as possible how it seems to me that the provisions on sanctions fit together, on the assumption that the JSA Pilot Scheme Regulations are available to a reader for consultation, and in the course of that explain how the evidence before the appeal tribunal was insufficient to support its decision.

6. Regulation 4(1) of those Regulations allowed a sanction under section 19 to be imposed in relation to Project Work only in relation to a person to whom regulation 4(2) applied. The ~~first~~ condition under regulation 4(2) was that the person should be someone to whom regulation 3 applied. Regulation 3 was split into paragraphs (a) and (b). It is not entirely clear whether these paragraphs were meant to be mutually exclusive or not, but I think that the better reading is that a person could come within both paragraphs if the respective conditions were met.

7. Regulation 3(a) applied where a person of the right age had received a written request to attend an employment interview on or after 9 April 1996 at an appropriate office, and was required to attend such an office. "Appropriate office" was defined as one of the specified offices of the Department for Education and Employment at which the person was required to sign on for benefit purposes (and included the Hull (Essex House) office at which the claimant in the present case seems to have been required to sign on). "Employment interview" was also given a very specific definition in regulation 2(1). In relation to regulation 3(a), it meant "an interview in respect of which [the person] has received written notice requesting him to report at a specific time, place and date to an employment officer for an interview in connection with his prospects of employment". There was no evidence put forward to the appeal tribunal that the claimant had received such a request. A further condition of the application of regulation 3(a) was that at the date on which such a request was received the person concerned had been receiving benefit (ie unemployment benefit, income support or JSA) for a continuous (or nearly continuous) period of two years. There was no evidence of the periods for which the claimant had been in receipt of benefit or of any interruptions. Evidence that he had been signing on since 6 June 1994 did not in itself establish that that condition was satisfied from 6 June 1996 onwards.

8. The certificate at page 6 of the papers that the claimant was eligible to be included in the Project Work Pilot is far too unspecific to be of any use in relation to regulation 3(a). In giving leave I described that document as a certificate on behalf of the Secretary of State. I suppose that that is right, as the person signing must have been a civil servant of some sort, but the document does not give the status of or post occupied by the signatory, which is far from satisfactory. But even if the document was signed by someone with authority to do so, there was nothing in the JSA Pilot Scheme Regulations to give any conclusive effect to a certificate by the Secretary of State. There would only be evidential value in a statement from someone with personal knowledge or who had inspected records that, say, a written request to attend an interview expressly for the specified purpose had been sent at some specific date.

9. Regulation 3(b) was in similar general terms to regulation 3(a), except that it applied where a person of the right age received a notice under regulation 23 of the Jobseeker's

Allowance Regulations 1996 requiring the person to attend an employment interview on or after 7 October 1996. Notices under regulation 23 would include notices to sign on on particular dates. But for regulation 3(b) only notices to attend employment interviews counted, ie under regulation 2(1) notices requiring the person "to attend an interview to discuss his prospects of work". Again, there was no evidence of the giving of such a notice or of the receipt of benefit for two years before the date of such a notice, and nothing of use in the document on page 6 of the papers.

10. There are therefore large gaps in the evidence before the appeal tribunal to show that the claimant in the present case was a person to whom regulation 3 of the JSA Pilot Scheme regulations applied. It may well be that those gaps could easily be filled to show that regulation 3 did apply. But there are still difficulties in relation to the other conditions in regulation 4(2).

11. Under regulation 4(2)(a) it was a condition that the person had attended at least one employment interview at an appropriate office within the period from 13 weeks after attending a first employment interview to 26 weeks after attending that interview. A definition of "first employment interview" was contained within the definition of "employment interview" in regulation 2(1). In relation to those to whom regulation 3(a) applied, it was the first employment interview attended on or after 9 April 1996 and in relation to those to whom regulation 3(b) applied, it was the first employment interview attended on or after 7 October 1996. I have concluded that in the case of a person to whom both paragraph (a) and paragraph (b) of regulation 3 applied, the first employment interview was the first qualifying interview on or after 9 April 1996. The fact that a person fell within regulation 3(b) does not mean that only interviews taking place on or after 7 October 1996 could count for starting the calculation of the period of 13 to 26 weeks. It is therefore vital to have precise evidence of the date of the interview which is said to constitute the first employment interview, as well as of matters which bring it within the definition of an employment interview. There must also be precise evidence of the date of some subsequent employment interview which is said to meet the condition in regulation 4(2)(a). The appeal tribunal did not have any such evidence.

12. Under regulation 4(2)(b) it was a condition that the person had been given, at the subsequent employment interview under regulation 4(2)(a), a written notice warning of the possible effect on benefit of failing to participate in Project Work. Here, there was evidence before the appeal tribunal that the claimant was notified at an interview on 13 November 1998 (although was that an employment interview that counted under regulation 4(2)(a)?) of where and when he was required to attend Project Work, but no evidence of the giving of a written warning notice.

13. Some of the points made above may seem like technicalities, but the regulations approved by Parliament carefully laid down specific and detailed conditions which had to be satisfied before a claimant could be subject to a sanction under section 19 of the Jobseekers Act 1995 for failing to attend Project Work. A sanction should not be imposed unless it has been proved by the adjudication officer that all the necessary conditions were met.

14. For the reasons given above, the appeal tribunal's decision dated 17 July 1997 must be set aside as erroneous in point of law. The claimant's appeal against the adjudication officer's decision must be referred to a differently constituted social security appeal tribunal for determination in accordance with the following directions. There must (subject to the possibility of an earlier review wholly in the claimant's favour) be a complete rehearing on the evidence presented and submissions made to the new appeal tribunal, which will not be bound by any conclusions expressed by the appeal tribunal of 17 July 1997. The new appeal tribunal must have regard to the points of law made above on the meaning and effect of the JSA Pilot Scheme Regulations and, if it reaches this point, the provisions on what amounts to good cause for the purposes of section 19 of the Jobseekers Act 1995. It should have a copy of the adjudication officer's submission dated 12 May 1998 before it.

15. Before the rehearing, the adjudication officer must (if the decision issued on 29 November 1996 has not been reviewed and revised to make jobseeker's allowance payable to the claimant for the period in issue) prepare a fresh written submission for the new appeal tribunal putting forward the best available evidence on the matters mentioned above, with as far as possible copies of original documents, and dealing with the application of the detailed provisions of the JSA Pilot Scheme Regulations. The claimant will then have an opportunity to study the new submission before any rehearing and to make any comments on it either before or at the rehearing.

(Signed) J Mesher
Commissioner

Date: 24 September 1998