

Local Tribunal: Brixton

Case No. 32/2

CP 93/1976

John / J / With Monica - 7/M

for
bullet.

Pension No. 138OR433

Retirement Pension
Good Cause

[ORAL HEARING]

1. My decision is that:-

- (1) the claimant is not disqualified for receiving retirement pension from 1 March 1975 to 30 November 1975 (both dates included) as she has proved that there was continuous good cause for the delay in making the claim until the date (1 March 1976) when it was made.
- (2) retirement pension is not payable to the claimant from 28 January 1975 to 28 February 1975 (both dates included) because that period is more than 12 months before the date (1 March 1976) on which the claim was made.

2. The claimant, a married woman, was born on 28 January 1910 and attained pensionable age (60) on 28 January 1970. Her husband attained pensionable age (65) on 9 April 1969 and was awarded retirement pension from 10 April 1969. She claimed retirement pension on her husband's insurance on 1 March 1976 declaring retirement from 28 January 1975 the date on which under the National Insurance Act 1965 section 30(4) (now Social Security Act 1975 section 27(5)) she was deemed to have retired. Retirement pension on her husband's insurance was awarded from 4 December 1975, the date 3 months before the date of claim. I am informed that the claimant's contributions also entitle her to a graduated pension, the rate of which has not yet been determined.

3. The effect of section 82(2)(c) of the Social Security Act 1975 is to prohibit the payment of pension to the claimant in respect of any period more than 12 months before 1 March 1976, which is the date on which the claim was made. The Commissioner (in common with the other statutory authorities) has no jurisdiction to relax this prohibition. My decision on this point is set out in paragraph (2) above.

4. The effect of regulation 13(2) of the Social Security (Claims and Payments) Regulations 1975 [SI 1975 No. 560], replacing an earlier regulation, is to extend the prescribed time for claiming pension to the date on which the claim is actually made, namely 1 March 1976, if the claimant proves that there was continuous good cause for the failure to make the claim before that date.

5. The claimant was represented at the oral hearing before me by Mr. M. O'Gara of Battersea Neighbourhood Aid Centre and the insurance officer was also represented. Both the claimant and her husband gave evidence before me and were cross examined. Their evidence was frank and honest and I accept it. The facts as I find them are set out below.

6. At some date shortly before 5 December 1974, when the claimant was sent form BR 329A, the husband of the claimant went to the local office of the Department of Health and Social Security and asked for advice about his wife's pension entitlement on attaining the age of 65. He was advised that the best thing for his wife, who was working, to do when she reached the age of 65 was to retire (i.e. give up her work) and claim her pension. If she desired to do work later she could do so. Shortly after 5 December 1974, the claimant received form BR 329A. She told her husband of this at the time. No forms were enclosed with form BR 329A. They thought that the form had no relevance to the claimant for her husband had already been advised that his wife should retire to claim her pension and this she had decided not to do.

7. A reminder was sent by the local office to the claimant on 22 January 1975 asking for a reply to the enquiry of 5 December 1974. The claimant clearly looked at form BR 329A when she received this reminder. For paragraph 2 of the form states

"To claim the pension please fill in the enclosed form ..."

and the claimant wrote at the bottom of the form

"I havnt received any enclosed forms"

and returned it to the local office, who received it on 3 February 1975. Although document 12 of the case papers records that (claim form) BR 46 was sent again on 4 February 1975, the claimant never in fact received it.

8. On 12 February 1976, the husband of the claimant went to see Mr O'Gara because he felt that she ought by then to have been receiving a pension. Mr O'Gara advised him to see the local office again and on 27 February 1976 he did so and received the same advice as he had been given on the first occasion: see paragraph 6 above. He went back to Mr O'Gara who convinced him that his wife was entitled to a pension at the age of 65 notwithstanding that she continued to work. Following that advice, his wife claimed pension on 1 March 1976.

9. On behalf of the insurance officer now concerned with the case, it was submitted for consideration that good cause had been proved for the failure to claim from 12-28 February 1976, in view of the advice received by the claimant's husband at the local office of the Department of Health and Social Security on 12 February 1976. But it was argued that the claimant, who admittedly received form BR 329A shortly after 5 December 1974, should have taken up with the local office the discrepancy between the first paragraph of that form, which states that she could claim retirement pension at 65 even though she continued working, and the advice that her husband had been given in person when he had enquired at the office. I do not accept this contention. In my judgment, the claimant had continuous good cause for her failure to claim pension during the period 28 January 1975 and 28 February 1976. Her husband, on whose insurance she in fact claimed on 1 March 1976 and on whose behalf enquiries as to her rights were made of the local office, was twice given wrong advice there. The claimant was entitled to rely on this advice, which related to her own particular circumstances. She told me in evidence, and I accept, that if the local office had sent her a claim form she would have completed it. But she did not receive a claim form with form BR 329A nor later, after she had written to the local office that she had not received such a form. It is not reasonable to expect a claimant, in these circumstances, to fasten on the discrepancy between the first paragraph of the printed form and the specific advice that her husband had been given on her behalf. Nor would it be reasonable to expect her to query the non-receipt of a claim form after the claimant had answered the reminder sent to her on 22 January 1975. She replied to that reminder by pointing out that no forms had been enclosed. But she did not, in her view, need a form since she had decided not to give up working. Since the local office had advised her husband that she should do this, the question of making a claim did not arise so far as she was concerned. Continuous good cause has been proved and my decision on this point is set out in paragraph 1(1) above.

(Signed) V G H Hallett
Commissioner

Date: 1 April 1977

Commissioner's File: C.P. 93/1976
C.I.O. File: I.O. 1613/P/76
Regional File: L.S. (Unregistered Papers)