

Commissioner's File: CSB/047/1990

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I dismiss the claimant's appeal against the decision of the social security appeal tribunal dated 13 October 1988 as that decision is not erroneous in law: Social Security Act 1975, section 101 (as amended).

2. This is an appeal to the Commissioner by the claimant, a man aged 56 years at the relevant time. The appeal is against the unanimous decision of a social security appeal tribunal dated 10 November 1988 which dismissed the claimant's appeal against two decisions of the local adjudication officer. The first was issued on 27 November 1987 and was that the claimant was not entitled to a supplementary allowance because he was in full time remunerative work. The second was issued on 4 February 1988 and required repayment of supplementary benefit amounting to £382.18, arising out of the alleged non-disclosure and misrepresentation by the claimant relating to his working as a sea coaler.

3. Appeals to the Commissioner lie only on its being shown that the decision of the social security appeal tribunal is erroneous in law. On issues of fact, the decision of the social security appeal tribunal is final. In the present case the tribunal clearly held a careful hearing into this case as is evidenced by their detailed record of decision (on form AT3). Moreover evidence was given to the tribunal by two special investigators of the department as to the claimant's alleged sea coaling activities and the extent of them.

4. The tribunal gave as its relevant finding of fact:-

"In the period between 20.10.27 and 25.11.87 the Appellant was seen on numerous occasions quite unmistakably engaged in work (viz sea coal gathering) for which payment is made

or which is done in expectation of payment".

5. The tribunal gave as its reasons for decision:-

"The frequency and extent of the Appellant's activities with his Land Rover gathering sea coal on the beach at Crimdon quite clearly demonstrated the fact that he was very extensively employed in sea coal gathering on a commercial basis. The requirements of Section 6(1) of the Supplementary Benefits Act 1976 are therefore not satisfied, as the Appellant has to be regarded as having been in remunerative full time work".

6. The claimant's representative appeals to a Commissioner on the grounds set out in a letter dated 23 February 1989, on the footing that the tribunal is said not to have given adequate reasons for a decision (as required by regulation 26(1)(b) of the Social Security (Adjudication) Regulations 1986). However in my judgment most of those grounds of decision relate only to the tribunal's findings of fact and as such I cannot interfere with them. A point, however, on which the claimant's representative and the adjudication officer now concerned concur is to submit that the tribunal did not in terms make a finding or refer in their reasons to whether or not the claimant was engaged in work on average for not less than 30 hours a week (35 hours if he was sufficiently mentally or physically disabled) - see regulation 9(1)(a) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981.

7. However, that regulation was cited in the local adjudication officer's submission to the tribunal and I must assume that they had it in mind. The evidence before them could justify a conclusion that the claimant was working for more than 30/35 hours a week. In my judgment when the tribunal referred to "the frequency and the extent of the appellant's activities and "the fact that he was very extensively employed in sea coal gathering" (together with their reference to section 6(1) of the 1976 Act) that showed that the tribunal did in fact consider that the claimant was working in excess of 30/35 hours a week. The fact that they did not actually mention the 30/35 hours' test nor make a precise finding as to the number of hours worked is in my view, on the facts of this case, therefore immaterial.

8. In the written submission dated 22 March 1990, the adjudication officer now concerned, as well as making the point about 30/35 hours per week, also submits:-

"Furthermore it would seem the tribunal preferred the evidence of the Adjudication Officer, but that being so, they should have given clear reasons as to why they preferred that evidence in preference to the evidence produced by the claimant (R(SB)33/85)".

9. At paragraph 15 of R(SB)33/85, the Commissioner said,

"Put at lowest, the tribunal in the present case were

not entitled to dismiss the claimant's evidence without proper explanation of their reasons for such rejection".

10. That was of course a very different type of case from this, involving a claim for a single payment on the ground of rapid gain in weight. Clearly the tribunal there would have to give reasons related to the claimant's evidence on that point. However in the present case it is clear to me from the detailed findings of fact and reasons for decision of the tribunal that they did give reasons for rejecting the claimant's evidence namely that they accepted the evidence of the special investigators given to them that "the appellant was seen on numerous occasions quite unmistakably engaged in work (viz sea coal gathering)". It is obvious therefore that they rejected inconsistent evidence by the claimant.

11. The same point in my view applies to paragraph 2 of the claimant's representative's letter of 23 February 1989 where it is submitted, "... that the tribunal have failed to explain why it did not accept the submission in evidence put forward by the claimant's representative as to the claimant's capacity to do the work which he is alleged to have done. If he is incapable of loading/unloading a landrover with sea coal, then the only work which it could be said that he had done was the driving of the vehicle." However the tribunal clearly took all this evidence into account. They stated in their findings of fact "the appellant suffers from osteo-arthritis" but they nevertheless considered that the observations of the actual sea coal gathering by the appellant showed that he was able to do this work. I can see no error of law in their accepting that evidence. They were clearly mindful of, and gave reasons relating to, the claimant's alleged incapacity to do the work.

(Signed) M.J. Goodman
Commissioner

(Date) 20 January 1992