

✓ Good cause
- no reason for claimant
to lodge (futile) claim
earlier.

JM/LMM/2

Commissioner's File: CU/004/90

SOCIAL SECURITY ACTS 1975 TO 1990

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. This is a claimant's appeal, brought by leave of the chairman of the social security appeal tribunal, against a decision of that tribunal dated 3 August 1989 (in respect of a hearing held on 11 July 1989) which confirmed a decision issued by the adjudication officer on 15 March 1989. My decision is that, although the claim made on 9 February 1989 for unemployment benefit for the inclusive period from 2 August 1988 to 7 February 1989 was not made within the prescribed time, the claimant has proved that there was continuous good cause for her delay in claiming. I have at this stage confined my decision to the issue of good cause. I have not awarded unemployment benefit in respect of the aforesaid period. That is because it has occurred to me (since the conclusion of the hearing which I held) that there may well be a question of exhaustion of entitlement. I leave that aspect of the case to the adjudication officer. In the event that his determination of that aspect shall be unacceptable to the claimant, she shall have liberty to restore this appeal before me so that I may give a final decision.

2. The claimant attended the hearing before me. She was represented by Mr Jonathan Clarke, of counsel, acting for the Free Representation Unit. I am most grateful to Mr Clarke. Well prior to the hearing he had submitted several pages of written submissions. When I told him that I had read those submissions, he made no attempt to rehearse orally what was therein. The hearing was thereby substantially abbreviated. The adjudication officer was represented by Mr L Scoon, of the Office of the Solicitor to the Departments of Health and Social Security. Mr Scoon, for his part, had made photocopies of the authorities to which he wished to refer. That also accelerated the hearing, since neither Mr Clarke nor I were put to the trouble of turning up those authorities in the relevant books. I pay tribute, too,

to the good humour of Mr Scoon, who cheerfully persisted with his submissions whilst divining that the day was going against him.

3. The claimant is a young lady who, for 9 years after leaving school, worked on electronic wiring. That employment came to an end on 12 January 1988. It did so because the company for which the claimant worked moved its operations further afield than the claimant was prepared to follow. The claimant claimed and was awarded unemployment benefit. That benefit remained in payment for more than six months. But on 28 July 1988 the claimant attended a restart interview. That proved to be a turning point. The claimant told me that, in the course of that interview, she gained no uncertain impression that the interviewing lady was sceptical as to the claimant's entitlement to unemployment benefit. The impression was well founded. On 2 August 1988 the claimant was issued with form UB 48B. I quote the first three paragraphs thereof:

"One of the rules for getting unemployment benefit is that you must be available for work. I am writing to tell you that a doubt about your availability for work has come up as a result of.....[I cannot complete this sentence. No copy of the original form UB 48B, as sent to the claimant, is now available].

We have therefore passed your claim to an Adjudication Officer who will decide whether you can still receive unemployment benefit.

We can pay you unemployment benefit until the Adjudication Officer makes this decision."

4. It was on 9 August 1988 that the adjudication officer made the relevant decision. It was wholly adverse to the claimant. The then recent decisions awarding unemployment benefit were reviewed. I quote from the resultant revision:

"Unemployment benefit is not payable from 28.7.88 to 1.8.88 (both dates included) because the claimant places restrictions on the nature and conditions of employment which she is prepared to accept and in consequence has no reasonable prospects of securing employment...

If any further claim is made in respect of a day falling in the period 2.8.88 to 5.11.88 (both dates included) and on that day the grounds of this decision have not ceased to exist, this decision is to be treated as a disallowance of that claim."

So the claimant ceased to receive unemployment benefit.

5. But the claimant was not satisfied with that decision. She carried it to the appeal tribunal. There are not before me any of the papers relating to that appeal; but it is common ground that on 7 February 1989 the tribunal allowed her appeal. It found - in other words - that the claimant -

- (a) had at no time placed unreasonable restrictions upon the nature and conditions of the unemployment which she was prepared to accept; and
- (b) accordingly, should not have had her entitlement to unemployment benefit terminated.

The claimant maintains - and I unhesitatingly accept - that at the close of that hearing the presenting adjudication officer advised the claimant to complete and lodge "a backdated claim form". I also accept that that adjudication officer said nothing about any possibility of that late claim's being rejected upon the bare ground that it was too late.

6. To the passenger on the Clapham omnibus (the law's favourite prototype of the reasonable man), everything would at that point have seemed entirely straightforward. Until late in July 1988 the claimant had been drawing unemployment benefit. Payment of that benefit had then been terminated because the local adjudication officer had taken the view that the claimant had placed unreasonable restrictions upon the sort of work which she was prepared to accept. An appeal tribunal had held that view to be unfounded - and had reversed the adjudication officer's decision. So - the man on the Clapham omnibus would have assumed - the claimant's benefit fell to be reinstated and the arrears paid.

7. But it did not work out like that! The claimant promptly completed and submitted the appropriate form (on form UB 591), specifying 2 August 1988 to 7 February 1989 as the period the subject of her retrospective claim. But that claim was refused in toto. She was told that she had failed to prove that there was continuous good cause for her delay in claiming. I am bound to say that if I had not read that in black and white in the papers, I should have been reluctant to believe it.

8. The adjudication officer's case can be summarised thus:

- (a) The basic rule in respect of unemployment benefit is that the time for claiming is the day for which the claim is made - and no later.
- (b) There had been nothing whatever to prevent the claimant from "signing" at the unemployment benefit office (ie from "claiming") throughout the period from the adjudication officer's decision of 9 August 1988 to the appeal tribunal's decision of 7 February 1989. Indeed, such "signing" was exactly what the claimant should have done, if only to keep herself in touch with any job opportunities which might have come up through the Jobcentre.
- (c) Admittedly (and this was accepted by Mr Scoon), neither in writing nor by word of mouth did the Department of Employment advise the claimant of the desirability of continuing to go through the motions of claiming a

benefit to which she had been held to have no entitlement; but the claimant, having no confident knowledge of the position in law, ought herself to have initiated enquiries.

- (d) In short, the claimant was in the position of those who make a deliberate election not to claim (cf C.S. 554/49).

9. I must confess that I am quite unable to see the case like that. The claimant says that she could see no point whatever in making a claim - week after week - for a benefit in respect of which she had been authoritatively told that she had no entitlement. She disagreed with that ruling; but she had carried the ruling to appeal - and considered that there was nothing further to be done until that appeal had been resolved. Whilst awaiting such resolution, she could see nothing to enquire about.

10. On the meaning of "good cause" in the context of delay the reported decisions of the Commissioner are legion. For my part, I have always valued paragraph 6 of unreported decision C.S. 15/79, the decision of a most wise and experienced Commissioner (now, alas, dead):

"6. In my view, the attempted definition which was approved in the above mentioned Decision R(S) 2/63 is not helpful. I do not consider that it is possible to define what constitutes a good cause, for the simple reason that I consider that Parliament allowed such a vague phrase to be included in this part of the law so as to enable the determining authorities to exercise a sensible judgment in each case depending on the circumstances of that case. There have been many cases when it has been recognised that complication in the law does excuse delay; became on many occasions ordinary people cannot be expected either to know what the law is or to know that they ought to enquire about it. In my view, the test for every case must be one of reasonableness. The question for the determining authority to answer is: has the person concerned done or omitted what can reasonably be expected of him having regard to his rights and duties under the social security scheme?"

I have set out enough to leave in no doubt my own answer to that question.

11. The claimant's appeal is allowed.

(Signed) J Mitchell
Commissioner

(Date) 13 May 1992