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Late Claim - Cl. Mar

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Commissioner's File: CU/071/1993

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SOCIAL SECURITY ACTS 1975 TO 1990

SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. For the reasons set out below, the decision of the social security appeal tribunal given on 16 March 1992 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the decision of the social security appeal tribunal of 16 March 1992.

3. The question for determination by the tribunal was whether the claim for unemployment benefit for the period from 1 December 1990 to 25 January 1991, which it was conceded was out of time, could nevertheless succeed on the ground that the claimant had good cause for his delay. In the event, the tribunal, upholding the decision of the adjudication officer, decided that such good cause had not been established, and decided that as a result the claimant was not entitled to unemployment benefit for the aforesaid period. The tribunal gave the following reasons for their decision:-

" 1. The claimant, a self-employed engineer, finished his work on 2 November 1990, working thereafter only on isolated days.

2. On 25 January 1991 he approached the Benefit Office and was given an appointment for 31 January 1991 when he claimed Unemployment Benefit from 1 December 1990 to 24 January 1991.

3. He gave as his reason for delay in claiming his confidence that work would be available as a result of his efforts to obtain it, but in that period he had received 2 promises of definite work."

The tribunal gave as the reasons for their decision the following:-

"In general, a mistaken belief as to the availability of work cannot amount to good cause, and although more recently the strict rule in R(U) 34/51 has been somewhat relaxed, it still applies in cases where the delay is long and the prospect of work not certain."

I see nothing wrong in law with the tribunal's decision.

4. The adjudication officer in his submissions to the tribunal made the following helpful observations:-

" 4. It is, I submit, well established that ignorance of his statutory rights and duties does not, of itself, provide a person with good cause for delaying his claim to benefit (see paragraph 13 of decision R(S) 2/63 and paragraph 6 of decision R(S) 1/73). However, the Commissioners have accepted that there can be good cause for a delay if the delay is due to a mistaken belief which is reasonably held. See, for example, decision R(P)1/79). In paragraph 11 of decision R(S) 8/81 the Commissioner held that in considering whether a person who was ignorant of his rights, or of a time limit for claiming, could not reasonably have been expected to be aware of them, the first question that should be asked is whether he made any enquiries at the local office of the relevant Department and, if not, whether he could reasonably have been expected to do so.

5. In the present case there is, I submit no apparent reason why [the claimant] could not have enquired at the benefit office when he became unemployed, where the time limit would have been explained to him.

6. Furthermore, [the claimant] has said that he did not claim earlier because he felt confident that follow-on work would be available and it was only when his savings were being used up that he felt that he should claim. However, in decision R(U) 34/51 the Commissioner held that a person who delayed claiming benefit because he initially thought that his spell of unemployment would be short did not have good cause for the delay. Furthermore, in decision CS/554/49 the Commissioner stated that deliberate election not to claim, even for altruistic reasons, was not good cause."

I see the force of all those submissions, and doubtless they coloured the tribunal's thinking.

5. The plain fact of this case is that the claimant gambled that he would obtain employment quickly, and in the light of that assumption, which unfortunately proved mistaken, chose not to claim benefit timeously, or even enquire about time limits at the local office. In this situation the principle set out in

R(U) 34/51 clearly applies. In that case, the claimant did not claim for one day because he believed, mistakenly as it proved, that he would obtain work immediately thereafter, and as a result, by reason of the 'three days' rule would not in practice receive any benefit for that day. Again, he gambled that he would find employment immediately after that day, and when he did not, and the possibility of entitlement to benefit for that day became realistic he sought to make a late claim. The tribunal rejected the claim. They said:-

" 8. The claimant fails to show good cause for the delay in making his claim in the prescribed manner when he deliberately refrains from the discharge of his statutory duty, because he does not expect that he would derive any immediate or future advantage from so doing."

Whether or not the claimant in R(U)34/51 was to derive any advantage from the claim depended upon the date when he recommenced employment. In the present case, the position was slightly different in that the claimant appears to have proceeded on the basis that it was not worth his while claiming for any day of unemployment, even though he would have definitely received benefit in respect of it, because he anticipated the availability of work in the very near future and the loss of benefit would not be great. It was a matter entirely for the claimant whether he claimed within the statutory period, or decided to abandon his entitlement as being, as he thought, too short to worry about. But having made his election, the claimant cannot now seek to rectify the position by pleading good cause.

6. The adjudication officer now concerned has brought to my attention paragraph 7 of CU/120/92, which valiantly seeks to summarize the concept of good cause in the light of accumulated authority, but, in my judgment, only serves to muddy the waters, and has suggested that its effect is to qualify the paragraph set out in R(U) 34/51. That paragraph reads as follows:

"7. As is pointed out by another Commissioner in paragraph 7 of decision CU/215/1987, the rule that R(U) 34/51 is said to be authority for must be closely examined. R(U) 34/51 was a case in which a claimant deliberately elected not to claim benefit for a day because he did not expect benefit to be payable for that day. It was held that refraining from claiming for that reason was not good cause. Thus the question whether a deliberate election not to claim benefit amounts to good cause depends on the reason why that decision was made. That approach is consistent with other cases involving what was said to be a deliberate election not to claim benefit, such as R(U) 20/56, R(I) 6/62 and R(S) 1/68. All the circumstances must be considered. If the sole reason for a late claim is that the claimant thought his unemployment would be short or did not need the money, that is unlikely to amount to good cause, but if there are other factors those may amount to good cause. Throughout, the general approach to the meaning of good

cause set out in paragraph 11 of R(S) 2/63 must be applied that it means "some fact which, having regard to all of the circumstances (including the claimant's state of health and the information which he had received and that which he might have obtained) would probably have caused a reasonable person to act (or fail to act) as the claimant did". CS 554/49, which was also cited in the adjudication officer's written submission to the appeal tribunal in support of the proposition that a deliberate election not to claim, even for altruistic reasons, is not good cause, is subject to similar reservations. One of the reasons why the claimant in that case did not claim was that he thought (wrongly, but reasonably) that he would be paid his salary in full during sickness. CS 554/49 is specifically mentioned in paragraphs 12 and 18 of R(S) 2/63 as one of the decisions which must be read subject to the more liberal approach to such circumstances propounded in R(S) 2/63. Its authority in support of any 'rule' on deliberate elections not to claim must therefore be dubious."

The principle of R(U) 34/51 is, in my view, perfectly clear. A person who elects not to claim unemployment benefit for any day, because he anticipates the period of unemployment will be short and the loss of benefit small or (where the period of unemployment falls within the first three days of any period of interruption of employment) non-existent, he cannot, if his anticipation proves unfounded, on a subsequent late claim, plead good cause for such lateness. That principle applies in the present case, and accordingly the tribunal, in relying on it, did not err in point of law. They reached the only decision they properly could on the evidence before them.

7. Accordingly, I have no hesitation in dismissing this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 19 May 1994