

Good cause for late claim - self employed person.

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JMH/SH/2

Commissioner's File: CU/137/1992

SOCIAL SECURITY ACTS 1975 TO 1990

SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: David Holmes

Appeal Tribunal: Southampton

Case No: 71861287

1. My decision is that the decision of the social security appeal tribunal is erroneous in point of law and accordingly this appeal succeeds.

2. This is an appeal from the decision of the social security appeal tribunal given on 20 July 1992, who held that the claimant was not entitled to unemployment benefit during the period from 28 February to 8 April 1992. The adjudication officer submits that the latter date should have been 9 April 1992, the day on which the claim was made in accordance with column 1, entry 1, Schedule 4 to the Social Security (Claims and Payments) Regulations 1987. I agree with that submission. The grounds for the dismissal of his appeal by the tribunal were that he had not shown continuous good cause for the delay so as to satisfy regulation 19(2) of those Regulations. (In their reasons for their decision the tribunal talk of "just cause" as opposed to "good cause". I do not think anything turns on that.)

3. The claimant's submissions to the Commissioner which comprised the grounds of appeal state inter alia as follows:

" (1) Chairman's note of evidence

Work was obtained through personal contact. He solicits work by calling on potential customers and showing them his folder or work round."

However, the claimant when giving evidence explained that work was obtained by him through advertising, writing to employers, which might result in a presentation to a potential client.

I submit that the chairman did not fully understand how the claimant obtained work and therefore, this was not fully reflected in this part of the decision."

The obvious inference is that whereas, if work was obtained through personal contact, the claimant would be more likely to know his position immediately or at any rate within a relatively short time, whereas if he obtained work through advertising, there could reasonably be expected to be a delay. I would think the delay in attracting orders through writing to former employers would be no different to delay which was likely to be experienced when the work was solicited through "personal contact".

" (ii) Reasons for decision

Tribunal accepted that uncertainty on the part of a self-employed person accustomed to receiving commissions from a variety of sources as to the point where his business is no longer viable can amount to just cause. However, there must come a point at which such uncertainty can no longer viable can amount to just cause. The tribunal accepted that in appellant's case it might be reasonable for him to wait for a week or perhaps a little longer after he received his last payment or commission, but a wait of 5 weeks or longer could not be justified or categorised as just cause.

"The tribunal concluded, tribunal could not agree that by 8.4.92 appellant was still in any doubt as to the viability of his business.

"It is my submission that this aspect of the decision was contrary to the evidence given. The tribunal [specified] that five weeks or longer could not be characterised, this statement is not supported by any evidence. The tribunal failed to recognise this key issue and failed in their findings to address this issue correctly taking into account the characteristics of the business, and spells of no work, prior to the period in question, and to determine a decision correctly, in the light of the evidence which was presented."

4. Now I think it is important to consider the background. The claimant had had 15 years experience in the industry. He had been unemployed on previous occasions and knew the need to apply promptly for benefit. I note that ignorance by itself does not amount to good cause for the purposes of the regulation. The claimant became self-employed because at the time he could find no work. He was self-employed since June 1991. There was clearly work to begin with but that dried up when he received his last payment on 27 February 1992 which was for £568. There was then nothing in the pipeline and in the ensuing five weeks nothing turned up.

5. The Tribunal made the following findings of fact to which in my mind not sufficient attention has been drawn "On 27.2.92 Appellant received £568 for work completed but at that point there was nothing "in the pipeline i.e. nobody owed Appellant any money for work done and he had no orders in hand. However, one customer was talking of commissioning a 52 page brochure which would have produced sufficient income for 3 months and there was a possibility (which has since materialised) of a training video"

And later:

"He received no further commission after that date [27.2.92] though he had realistic prospects of securing at least 2 further commissions".

And later:

"He thought it would be considered "absurd" if he were to claim Unemployment Benefit the day after receiving his last customer cheque, and was worried lest he might put himself in trouble with the authorities if, after claiming Unemployment Benefit he received another commission".

6. The question of good cause in the case of self-employed persons is always difficult. The onus is on the claimant to show good cause and the tribunal have to come to their decision on the evidence submitted to them and in the light of all the surrounding circumstances. Assistance in this respect is to be found in another self-employed case namely the decision in Commissioner's file CIS/452/1991 at paragraphs 14 and 15:

" 14. ... However, I must also bear in mind that the Tribunal in paragraph 13 of R(S) 2/63 said, "Ignorance of one's rights is not of itself good cause for delay in claiming. It is in general the duty of the claimant to find out what they are, and how and when they should be asserted."

" In my judgment the claimant had failed in this duty by delaying making any claim at all or making any enquiry of an office of the Department until November 1990 ... In my judgment, it was not reasonable for the claimant to have done nothing about making an enquiry or making a claim until November 1990. [I should note that the delay in that case was 1 August to 13 November 1990 - some 15 weeks].

" 15. [The claimant's representative] sought to excuse this on the ground that it was rather like waiting for a bus, i.e. that the longer you waited the more your expectation that the bus would come within the next week or so. I appreciate this argument but there certainly came during the period from July-November 1990 a time when the claimant ought no longer to have been inactive in my view, and should either have made some enquiry or made a proportionate claim for income support. I am sorry to have to hold this because I can well understand the deep disappointment at not having his film project carried through to fruition. Nevertheless

I must construe the expression "good cause" (which is not necessarily synonymous with "good excuse") in accordance with the reported Commissioner's decision."

7. I bear in mind the following:

(i) The claimant had in this case been in the industry for some 15 years. though as an employee and not self-employed; and

(ii) he had been unemployed on previous occasions and knew the need to apply promptly for benefit.

(i) But, as against that: his period of self-employment was only from June 1991 ending on 27 February 1992, a comparatively short period. He could have had no real experience of what protracted "cold-spells" he might expect to suffer;

(ii) The Tribunal found as a fact he had realistic prospects of securing at least two further orders. Possibly before the end of the 5 weeks period the alarm bells should have begun to ring. Especially bearing in mind the additional fact that the tribunal might have failed to appreciate that some of his work was obtained through advertising and therefore possibly greater delay in receiving orders might be expected, I cannot say that the claimant ought to have made inquiries before.

8. Accordingly I hold that the claimant has shown good cause throughout the relevant period 9 April is to be substituted for 8 April.

(Signed) J.M. Henty  
Commissioner

(Date) 4 January 1994