

Commissioner's File: CU/173/1985

C A O File: AO 4143/UB/1985

Region: North Eastern

**SOCIAL SECURITY ACTS 1975 TO 1986
CLAIM FOR UNEMPLOYMENT BENEFIT
DECISION OF THE SOCIAL SECURITY COMMISSIONER**

Name: Elizabeth Whellans (Mrs)

Appeal Tribunal: Sunderland

Case No: 67/3

[ORAL HEARING]

1. My decision is:-

- (i) Unemployment benefit is not payable for Wednesday 26 September, Friday 28 September, Saturday 29 September and Monday 1 October and Wednesday 3 October all dates in 1984 because the claimant regularly works for the same number of days in a week for the same employer or group of employers and she was employed to the full extent normal in her case in the weeks in which those dates fell [Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983, regulation 7(1)(e) and (2)].
- (ii) The forward disallowance of further claims in respect of any Monday, Wednesday, Friday and Saturday is confirmed so far only as regards the period 5 October 1984 to 25 September 1985.
- (iii) Unemployment benefit is not payable for 30 September 1984 (Social Security Act 1975, section 17(1)(e)).

2. I held an oral hearing of this appeal at the same time as another appeal the reference to which on Commissioner's file CU/184/1985 (which I shall call "the first decision"). A copy of the first decision accompanies this decision. The claimant, who attended, was represented by Mr Mark Rowland, of Counsel, instructed by the Child Poverty Action Group. The adjudication officer was represented by Mr N. Butt, of the Solicitor's Office, Department of Health and Social Security. The nature of the present appeal is the same as that appertaining to the first decision, as are the relevant statutory provisions and the relevant law, as there explained, and it is unnecessary to repeat these matters here.

3. The facts are not in dispute. The following summary is taken from the first written submission of the adjudication officer now concerned.

"5. The claimant was employed as a despatch clerk from November 1980 to June 1981 and as a sales co-ordinator from March 1982 to September 1983 (page 3). In the meantime she commenced part-time employment as a youth leader in October 1982 on Thursday (page 4). It appears that she made a claim to unemployment benefit in October 1983 (page 23) and on 24 11 83 the local adjudication (then insurance) officer disallowed her claim to unemployment benefit for 4 10 83 and 6 10 83 under the provisions of regulation 7(1)(h) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 (SI 1975 No 564) which then applied and gave a forward disallowance in respect of Tuesdays and Thursdays for the inclusive period 7 10 83 to 24 10 84 (page 6). The local adjudication officer subsequently disallowed unemployment benefit for 6 7 84 under the provisions of regulation 7(1)(e) and (2) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 and gave a forward disallowance in respect of Mondays, Wednesdays, Fridays and Saturdays for the inclusive period 7 7 84 to 5 7 85 (page 10). On 3 7 84 the claimant started part-time employment as a youth leader for the Borough of Sunderland (page 7). I have been informed that her employment with the Borough of Sunderland is not connected in any way with the employment she had with the YMCA. It is not known when she terminated her employment with the YMCA but the record of claims to unemployment benefit indicates that there was no gap between the end of one employment and the commencement of the other (page 17). The claimant obtained temporary full-time employment from 18 7 84 to 7 9 84 (page 13) and on 25 9 84 she claimed unemployment benefit from that date (page 1). On 17 10 84 the local adjudication officer gave the decision (page 22) which, following the claimant's unsuccessful appeal to the appeal tribunal, gives rise to the present appeal."

4. It should be added that the claimant was paid for her Tuesday and Thursday evening work at the rate, as at October 1983, of £12 per night. (There is no suggestion that that rate was less in respect of the days now in issue).

5. The decision of the tribunal was as manifestly defective as that in the appeal giving rise to the first decision and my reasons for deciding to exercise my discretion to hear the appeal myself instead of sending the case back to another tribunal are the same as set out in the first decision.

6. Apart from temporary full-time employment from 18 July 1984 to 7 September 1984, the claimant has not worked in full-time employment since September 1983. From October 1982, however, she has worked in part-time employment on Tuesday and Thursday evenings with the YMCA and from 3 July 1983 with the Borough of Sunderland without any gap between those employments.

7. Regulation 7(1)(g) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 does not assist the claimant because the claimant's earnings from her part-time employment on Tuesday and Thursday evenings exceeded £2 a day: see paragraphs 14 and 15 of the first decision.

8. Regulation 7(1)(e) applies to the claimant because she regularly works for the same number of days a week for the same employer. She had been working on Tuesdays and Thursdays every week since 3 July 1983 and had had no other employment since the commencement of the period in issue. Applying the law as explained in Riley's case and explained in paragraph 11 of the first decision, looking to the future there is no clear evidence as to whether the claimant's pattern of work was likely to be permanent or transitory. There is no suggestion that the part-time work was likely to lead to fuller employment. Looking to the past the claimant had not been in full-time employment since September 1983 apart from temporary full-time employment from 18 July 1984 to 7 September 1984, which in view of its short duration cannot be regarded as evidence of the "regular full-time work" to which Lord Justice Slade was referring in Riley's case. I agree

with the submission dated 30 September 1986 of the adjudication officer now concerned and with his earlier submission that the claimant's pattern of work of part-time employment with the YMCA from October 1982 on Tuesday and Thursday evenings and from 3 July 1984 with the Borough of Sunderland without any gap between those employments constitutes "normality" and that the appeal falls to be disallowed accordingly.

9. My decision is set out in paragraph 1 above. As for the delay in giving my decision, this was stood over at request for the reasons explained in my first decision, last paragraph.

(Signed) V.G.H. Hallett
Commissioner

Date: 4th August 1987