

Cu 210/1981

IEJ/MP

SOCIAL SECURITY ACTS 1975 TO 1981

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Decision C.U. 3/81

1. (1) I have - with some reluctance in the circumstances of the case - concluded that this appeal must fail. It does so because the facts are not in dispute and the law applicable to them is in my judgment clear and adverse to the claimant.
  - (2) My decision is that unemployment benefit is not payable for the period 20 September 1980 to 21 February 1981 because the claims for benefit made by the claimant in respect of that period were made in the circumstances that she was a seasonal worker making such claims during her off season lasting from 20 September 1980 to 24 May 1981 (both dates, included) and she has failed to prove that she had had, or could at any time within that period have reasonably expected to obtain, a substantial amount of employment in that off-season.
  - (3) My decision founds upon regulation 19 of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 as amended, ("Regulation 19") - a copy of which is set out as the Appendix to this decision.
  - (4) My decision is to the same substantial effect as was the original decision dated 14 October 1980 of an insurance officer which has been upheld (by a decision dated 4 December 1980) by a local tribunal, from the latter of which the claimant is now by leave appealing to the Commissioner. But I have expressed it in terms which embody adjustments now able to be made, with hindsight, as to the actual periods for which the claimant claimed benefit during the off-season in question.
2. The claimant, now in her early 20's, was born and has lived all her life at a well-known seaside resort on the Isle of Wight. She

left school without obtaining higher qualifications; and though she would work elsewhere on the island than in her home town, she is constrained by reason of her mother's ill health from seeking work outside the island. In the circumstances, whilst she has at all material times been both willing and anxious to obtain full-time employment over the whole of each year, she has experienced great difficulty in obtaining any employment other than seasonal work in local hotels over their summer season. Her actual record of employment, all in her home town, has been as below tabulated:

<u>Period</u>		<u>Nature of Work</u>
From	To	
Nov 1975	March 1976	Jewellery Setter
May 1976 (2 weeks)	13 5 76	Chambermaid
29 5 76	19 10 76	Chambermaid
8 4 77	8 10 77	Chambermaid
27 5 78	29 9 78	Chambermaid
26 5 79	26 9 79	Chambermaid
4 1 80	24 5 80	Nursing Home Auxiliary
25 5 80	19 9 80	Hotel Waitress
23 2 81	22 8 81	Permanent Hotel Worker

3. (1) In accordance with authorities to which I will below refer, an insurance officer had in October 1979 concluded and decided that the claimant was a seasonal worker whose off-season was from 27 September in one year to 25 May in the following year; and had disallowed unemployment benefit for her 1979/80 off-season so computed. When appealing against that decision to the local tribunal the day after it had been given, the claimant did not contend that she had either had or had reasonable expectation of obtaining a substantial amount of employment in her then present off-season.
- (2) However, by the time the case came before the local tribunal on 20 March 1980, she had in fact (as the insurance officer then concerned conceded) worked quite a substantial period in that off-season. That local tribunal allowed her appeal, not on the ground that she was not a seasonal worker, but on the ground that although a seasonal worker she had satisfied the additional requirements imposed upon seasonal workers as to claiming benefit in the course of their off-season by the amount of work which she in fact demonstrated she had had.
- (3) That was in reality a somewhat shaky foundation upon which to allow the appeal as regards the dates of claim directly in issue, as distinct from the forward disallowance, since she had neither had off-season employment nor demonstrated any expectation of having it by those dates: see as to this Regulation 19(2)(b)

- (4) But that is now "water under the bridge", in that there was no appeal by the insurance officer from that decision and it is not in issue upon the present appeal. I have made observations in regard to it only to prevent misunderstanding in the context of my present decision.

4. When, following her employment over the summer season of 1980, the claimant claimed unemployment benefit over the period from 19 September 1980 to (as events turned out) 22 February 1981 the insurance officer then concerned decided early on in that period that this fell within the claimant's 1980/81 off-season as a seasonal worker and by the decision referred to in paragraph 1(4) above disallowed the claimant's claims in that off-season on the same footing as had been done in the preceding year's off-season, treating her off-season as lasting from 20 September 1980 to 24 May 1981 (both dates included). And, as I have above indicated, it was from that decision that the claimant appealed to the local tribunal from whose decision upholding it she now appeals to the Commissioner.

5. In the event, as now known the claimant claimed unemployment benefit during that off-season only for the period commencing 20 9 80 and ending 21 2 81, for she obtained, with effect from 23 2 81, employment as a hotel worker which she expected to be of permanent status; and though this was apparently of short duration succeeded, it by obtaining a further such employment in which she was still engaged at 22 8 81 (the latest date to which the information before me goes) and which had, in her view, the character of permanent as distinct from seasonal employment.

6. The substantial contentions by the claimant upon the present appeal are first that she should not be regarded as ever having been a seasonal worker at all, and secondly that even if she has properly been so regarded in the past, she should not be so regarded in reference to the periods of claim for unemployment benefit in issue upon this appeal. And, she stresses (and I accept) that if and so far as her employment has hitherto been seasonal employment this has been by constraint of circumstances - namely that she could obtain no other - and not a voluntary choice on her part.

7. (1) I can, at large, see substantial force in the claimant's contentions in these respects.

(2) But the force of regulation 19 as it and its predecessors have been construed by established case law in this jurisdiction is both clear and conclusively adverse to her contentions.

8. The definition of "seasonal worker" in Regulation 19(1) will be seen to have two limbs - the second (which clearly does not apply to the present claimant) bears upon a person who normally restricts his or her employment to the same, or substantially the same, part or parts only of the year - i.e. a "voluntary seasonal worker". But the first limb bears upon a person whose normal employment "is" for a part or parts only of a year in an occupation or occupations of which the availability or extent varies at approximately the same time or times in successive years. And it is well established by case law

that this definition bears upon a claimant who as a matter of fact has a work record fitting the prescription indicated in the regulations, notwithstanding that this has arisen otherwise than from free choice.

9. (1) The character of analysis to be made in order to determine whether or not a person has become a seasonal worker is also well established by case law in this jurisdiction: see in particular Decisions R(U) 3/51 and the Tribunal Decision R(U) 4/75.
- (2) The burden of proof rests on the insurance officer to establish that a person has become a seasonal worker; but once that burden is discharged and a person is found to be a seasonal worker, the claimant continues to be so treated until and unless he or she can show that his normal employment is no longer seasonal. That burden is not discharged by obtaining substantial employment in any one off-season - normally a claimant will not be held to have ceased to be a seasonal worker until he or she has continued to have a substantial amount of employment in his or her off-season for 3 consecutive years: see Decisions R(U) 14/53 and R(U) 7/59.

10. Thus the substantive questions I have to determine are:-

- (i) Had the claimant become a seasonal worker in the context of Regulation 19 at any time prior to the dates materially in issue upon the present appeal; and, if the answer to that is yes,
- (ii) had the claimant at any time during the material period ceased to be a seasonal worker in the same context.

If the second question arises and is answered in the negative, the provisions of Regulation 19(2) must then additionally be taken into consideration.

11. Approaching these questions in the light of Decision R(U) 4/75 the present case is in my judgment one in which it is appropriate to apply the "three year rule" as a yardstick. Applying that rule in accordance with that decision I am in no doubt that the claimant had become a seasonal worker, in the context of Regulation 19, by the start of her "on-season" on 26 May 1979.

12. (1) Her 1979/1980 "off-season" commenced on 27 9 79 and in my judgment ended on 24 5 1980 - the day before that on which as indicated in the table in paragraph 2 above the claimant entered employment as an Hotel Waitress.
- (2) As the same table indicates, in fact the claimant obtained work as a Nursing Home Auxiliary for a substantial period during her 1979/1980 "off-season", although she re-entered Hotel employment on 25 5 80 - a date consistent with her by then established "on-season".

- (3) As further appears from the same table the claimant's employment as Hotel Waitress ended on 19 9 80 and, on the footing that she fell to be considered as a seasonal worker, her 1980/81 "off-season" commenced on 20 September 1980 and stood to end in the last week of May 1981.
13. (1) The decision of an insurance officer given on 14 October 1980 which is directly in issue upon the present appeal was given in the circumstance, as then known, that the claimant had claimed unemployment benefit from 20 September 1980 to 1 October 1980 (both dates included). In her grounds of appeal against that decision, which embodied disallowance for the period last indicated and forward disallowance for the balance of such "off-season" down to 24 May 1981, the claimant on 21 11 80 indicated in support of her appeal "I would just like to point out that I am still looking for a permanent job but due to the unemployment situation I am finding it increasingly difficult." The position was not significantly different, so far as the information on the case file indicates, when on 4 December 1980 the appeal was heard by the local tribunal. And in the light of the authorities to which I have above referred I am in no doubt that their decision disallowing the appeal was a correct decision at that time.
- (2) However, the claimant having appealed against that decision the case now comes before me with the more recent information as to the claimant's subsequent employment embodied in the table set out in paragraph 2 above. And since the appeal is by way of re-hearing, I am entitled to take into account that more recent information also.
14. So far as that information goes, I accept that as from 23 February 1981 over 22 August 1981 the claimant has been in employment having the character of a permanent job, as also that the part of that period down to 24 May 1981 (which, if the claimant is still to be considered as a seasonal worker, fell within her "off-season") represents a significant element of "off-season" employment. But where does that lead?
15. (1) The "three years rule" which, as I have indicated, generally applies to consideration of whether a worker who has acquired the status of a seasonal worker has shed it again is, like the same rule when considering the acquisition of that status, not one for universal application. There are circumstances which, where they obtain, might well lead to the conclusion that there had been such radical changes from the antecedent facts as to warrant such a conclusion being drawn sooner. But in my judgment the present claimant had not by the commencement of her 1980/1981 "off-season" shed the status of a "seasonal worker" which, as I have already above held, she had by then acquired.

- (2) It may fairly be said that the employment she had had during her then last off-season constituted an initial foundation for her being able to escape the application of the seasonal worker provisions at some date in the future. But, bearing particularly in mind that she appears to have left that employment in order to recommence what clearly was a seasonal employment during her normal "on-season" in 1980, I cannot in the light of the case law authorities regard the claimant as having successfully shed the status of seasonal worker by the commencement of her 1980/81 "off-season".
- (3) Moreover, true as it is that it can, with hindsight, now be seen that the claimant also enjoyed a substantial period of employment during her 1980/1981 "off-season", I can find no cogent evidence that (as Regulation 19(2)(b) would require) in regard to any of the dates for which the claimant claimed unemployment benefit in her 1980/81 "off-season" she had either had a substantial amount of employment before that date - the fact being that she had had none - or that she could in terms of Regulation 19(2)(b)(ii) reasonably have expected to obtain, after that day and in her current off-season, employment which (together with her employment (if any) before that day in that off-season) constituted a "substantial amount" of employment.
- (4) Thus while the substantial employment during her then current off-season which the claimant in fact enjoyed after 22 February 1981 is well capable of affording her assistance in the "seasonal worker" context hereafter, in particular because of the permanent character of that employment (if later events substantiate the anticipation that it be such) it cannot in my judgment carry the claimant to success upon the present appeal.

16. There are obvious merits in the case as put forward by the claimant if her circumstances are considered at large. But this is not a matter in which a Commissioner has any discretion. It is my duty to decide the case in accordance with the legislation as Parliament has seen fit to enact it.

17. My decision is accordingly as indicated in paragraph above.

(Signed) I Edwards-Jones  
Commissioner

Date: 12 July 1982

Commissioner's file: C.U. 210/1981  
C I O File: I.O. 3163/U/81  
Region: South Eastern

APPENDIX

Unemployment, Sickness and Invalidity Benefit Regulations,  
regulation 19

19.-(1) In this regulation-

"employment" means employment as an employed earner and includes employment as a share-fisherman within the meaning of regulation 1(2) of the Social Security (Mariners' Benefits) Regulations 1975; and "employed" shall be construed accordingly;

"local education authority", in relation to Scotland, means an education authority as defined in section 145(16) of the Education (Scotland) Act 1962;

"off-season" means, in relation to a seasonal worker, that period of the year (or, if more than one period, the aggregate of those periods) during which he is normally not employed, and for this purpose the expression "period" shall not include any period of less than 7 consecutive days;

"seasonal worker" means a person whose normal employment is for a part or parts only of a year in an occupation or occupations of which the availability or extent varies at approximately the same time or times in successive years; or any other person who normally restricts his employment to the same, or substantially the same, part or parts only of the year; and for the purpose of this definition the following provisions shall apply:-

- (i) the expression "part or parts only of a year" shall include any period of time (or, if more than one period, the aggregate of those periods whether in the same or different occupations) whatever the duration of that period: but where any period or periods of a year during which a person is normally not employed is not, or if more than one period (whatever the duration of any such period) do not amount in the aggregate to, more than seven weeks, that person shall not be treated as a seasonal worker;
- (ii) in construing the expression "normal employment", regard shall be paid to factors inherent in the nature or conditions of the occupation or occupation in which that person is engaged, and not to factors abnormal to that occupation or occupations notwithstanding that those factors persist for a prolonged period;

"a substantial amount of employment", means employment which is equal in duration to not less than one-fourth (or such other fractional part as may, in the circumstances of any particular case, be reasonable) of the current off-season;

"year" (where used in this paragraph) means the period of 12 months commencing with the first day in the calendar year on which the person concerned begins a period of normal employment.

(2) The following shall be additional conditions with respect to the receipt of unemployment benefit by a seasonal worker in respect of any day during his off-season-

(a) that he has registered for employment with the Manpower Services Commission or a local education authority throughout the period of 2 years immediately preceding that day, or, if he became a seasonal worker after the commencement of that period, from the day on which he became a seasonal worker until that day, other than (in either case) during any of the following periods, namely:-

(i) any period during which he was employed or was incapable of work;

(ii) any inconsiderable period;

(iii) any temporary period throughout which he was not available to be employed by reason only of domestic necessity or compulsion of law, or by reason of any other circumstances of an exceptional character;

and

(b) that either-

(i) in his current off-season he has had a substantial amount of employment before that day; or

(ii) (having regard to all the circumstances of his case, including the nature and extent of his employment (if any) in any past off-seasons and the industrial or other relevant conditions normally obtaining in the district or districts in which he is available to be employed) he can or could reasonably expect to obtain, after that day in his current off-season, employment which, together with his employment (if any) before that day in that off-season, constitutes a substantial amount of employment.

(3) Any period before 1 April 1978 during which a person was registered for employment with the Employment Service Agency shall be treated as a period of registration with the Manpower Services Commission for the purpose of paragraph (2)(a).