

CN 444/1979

JSW/JCB

SOCIAL SECURITY ACTS 1975 TO 1980

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Michael John York

Local Tribunal: Brixton

Case No: 75/4

ORAL HEARING

Decision C.U. 4/80

1. My decision is that -

(a) unemployment benefit is not payable to the claimant for the inclusive period 12 January 1978 to 30 March 1978 because the earnings factor derived from contributions of a relevant class paid by or credited to the claimant in the tax year ended 5 April 1976 is less than 25 times the lower earnings limit for that year as provided by paragraph 1 of Schedule 3 to the Social Security Act 1975 and regulation 14 of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975;

(b) the inclusive periods 4 October 1977 to 29 December 1977 and 12 January 1978 to 30 March 1978 are to be treated as one period of interruption of employment because they are not separated by a period of more than 13 weeks as provided by section 17(1)(d) of the said Act.

2. At the oral hearing before me, the claimant was represented by Mr M Rowland of the Citizens' Rights Office and the insurance officer was also represented.

3. It is not in dispute that the claimant was not entitled to unemployment benefit for the inclusive period 4 October 1977 to 29 December 1977 (referred to as "the first period") because for the relevant tax year ending on 5 April 1976 he had paid no contributions, having been abroad, and his earnings factor was nil. It was also not in dispute that, if the first period is to be treated with the period 12 January 1978 to 30 March 1978 (referred to as "the second period") as one period of interruption of employment, the claimant is also not entitled to unemployment benefit for that period.

Decision C.U. 4/80

4. The issue in the appeal is whether or not the 2 periods are to be treated as one period of interruption of employment because they were not separated by a period of more than 13 weeks, as provided by section 17(1)(d) of the said Act, or whether the first period is not to be treated as a period of interruption of employment, in which event a fresh period of interruption of employment would have commenced on 12 January 1978 and the relevant tax year would be the one ending on 5 April 1977. Although it has not been decided by the Secretary of State, it was agreed before me that the contribution conditions were satisfied for that tax year.

5. The relevant sections of the said Act and regulations have been set out in the written submissions and it is unnecessary to set them out again in detail except as hereinafter appears. Section 17(1)(a) provides, in relation to unemployment benefit, in a negative form, that a day shall not be treated as a day of unemployment unless on that day a person is capable of work and is, or is deemed in accordance with regulations to be, available to be employed in employed earner's employment. Section 17(1)(c) defines the expression "day of interruption of employment". Section 17(1)(d) provides -

"(d) any two days of interruption of employment, whether consecutive or not, within a period of 6 consecutive days shall be treated as a period of interruption of employment and any two such periods not separated by a period of more than 13 weeks ("week" for this purpose meaning any period of 7 days) shall be treated as one period of interruption of employment;"

Section 17(2)(a) enables regulations to be made, subject to subsection 17(1), as to the days which are or are not to be treated for the purposes of unemployment benefit (amongst other benefits) as days of unemployment (or of incapacity for work). Regulations have been made entitled The Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 (S.I. 1975 No 564), to which I shall refer as "the 1975 regulations".

6. Mr Rowland developed a submission contending, at the outset, that a day when the contribution conditions for unemployment benefit are not satisfied is not a day of interruption of employment if a claim is not made for that day or for any of the days in a period of unemployment. In support he referred to regulation 7(1)(b) of the 1975 regulations which provides -

"(b) a day shall not be treated as a day of unemployment if it is a day in respect of which a person is disqualified for receiving unemployment benefit;"

From that he argued that failure to satisfy the contribution conditions for unemployment benefit is tantamount to a disqualification for receiving benefit and therefore the days in the first period were not to be taken into account for the purposes of a period of interruption of employment under section 17(1)(d). Thus the relevant period of interruption of employment relating to the second period began in 1978.

7. As to what constitutes disqualification, Mr Rowland referred to Decision C.S. 174/49 (KL), which was a decision of a Tribunal of Commissioners dealing with the National Insurance Act 1946 and regulations made thereunder. Section 11 of that Act contains similar provisions to those of section 17 of the present Act. The National Insurance (Unemployment and Sickness Benefit) Regulations 1948 (S.I. 1948 No 1277), were made under the enabling power and regulation 6 contained a series of provisions for which days were not to be treated as days of unemployment or of incapacity for work. Provisions have been made to the like effect in regulation 7(1) of the 1975 regulations, but not in similar terms or covering a like set of circumstances as matters have evolved and statutory provisions have changed and been added to over the years.

8. The head note to Decision C.S. 174/49 (KL) is -

"The penalty for failing to make any claim at all is disentitlement not disqualification. Regulation 6(1)(c) of the Unemployment and Sickness Benefit Regulations applies to days of disentitlement as well as to days of disqualification.

Held that in respect of sickness benefit and unemployment benefit a claim must be made in respect of each day and a claim cannot be made prospectively."

The head note correctly summarises the reasoning of that decision. Mr Rowland contended that, as the Tribunal of Commissioners decided, in paragraph 4 of the decision, that a person who made no claim was disentitled to benefit and had expressed the opinion that regulation 6(1)(c) of the Unemployment and Sickness Benefit Regulations 1948 (now regulation 7(1)(c) of the 1975 regulations) must be read as applicable to days for which a claimant is disentitled to benefit as well as to those for which he is disqualified for receiving benefit, it followed that any day for which a claimant does not receive unemployment benefit because he does not satisfy the contribution conditions cannot form part of a period of interruption of employment because the claimant is disqualified for receiving benefit. He submitted that the condition as to claiming required by section 28 of the Act of 1946 was indistinguishable from the condition as to the contribution conditions being satisfied required by section 14 of the Act of 1975, with which I disagree. The 2 sections are quite different. He submitted that there was no logical distinction between not making a claim and not satisfying the contribution conditions and that, if a person is disentitled, that is equivalent to being disqualified. He referred to the words "entitled" and "requalified" in section 18(1) of the 1975 Act. He submitted that making an unsuccessful claim rendered a person worse off than not making a claim at all. But a person who does not claim would not qualify for credit of contributions. In a written submission, reference was also made to Hales v Bolton Leathers Ltd [1951] A.C. 531 at p 548, which I take to refer to the dissenting speech of Lord Oaksey. It does not seem to me to have any bearing, other than perhaps a very indirect analogy, to the provisions under consideration in this appeal.

Decision C.U. 4/80

9. Mr Rowland made a resolute attempt to support his contentions, although I found some difficulty in comprehending the cohesion of his submission. The submission has been made before, but not in precisely the same terms or in such detail. The insurance officer's representative referred to and relied upon a decision on Commissioner's file C.S. 343/1977 and to Decision C.G. 1/80 (not reported). The submission contrary to Mr Rowland's submission is admirably summarised in paragraph 14 of the latter decision in which Mr Canlin's argument on behalf of the insurance officer was accepted by the learned Commissioner. Mr Rowland sought to distinguish those decisions. He stated correctly that, in the decision on Commissioner's file C.S. 343/1977, there was not a submission on the lines of his argument. I note that in Decision C.G. 1/80 the argument based on Decision C.S. 174/49 (KL) was made after a short adjournment of some 15 minutes.

10. In my judgment, Mr Rowland's contention is not supported by Decision C.S. 174/49 (KL) which dealt only with failure to claim in a different set of circumstances. In that decision the claimant had title to benefit but had claimed it prospectively and, as I understand the reasoning of the Tribunal, they decided that it was to be treated as equivalent to a delayed claim for which good cause had not been proved and resulted in disqualification for receiving the benefit. In this appeal the claimant had no title to the benefit because there were no contributions and the claim failed at the outset, which is not the same as disqualification. The claimant did not qualify and was not disqualified. To draw an analogy between statutory provisions or descriptive language is not a sure guide to statutory interpretation. Observations to that effect are to be found in paragraph 17 of Decision R(S) 2/65.

11. The governing provision for treating a day as a day of unemployment is that contained in section 17(1)(a) of the 1975 Act to which regulations must be subject. Regulation 7(1) of the 1975 regulations provides for days which are not to be treated as days of unemployment or of incapacity for work, which would otherwise be treated as such days: "days not falling within those categories are days of unemployment. In the present appeal the claimant made a claim. It was not contended that he was either incapable of work or not available to be employed in employed earner's employment. Therefore the days were days of unemployment unless they came within any of the provisions for not treating them as such. The fact that he was not entitled to benefit because he did not satisfy the contribution conditions is not, in my opinion, tantamount to disqualification. Disqualification in regulation 7(1)(b) and (c) of the 1975 regulations relates to section 20 of the 1975 Act; other provisions for disqualification are contained in section 19 (stoppage of work due to a trade dispute) and section 82(5) (absence from Great Britain or imprisonment etc) of the 1975 Act. In Decision C.S. 174/49 (KL) the Tribunal were dealing with failure to make a claim at all. In the present case a claim was made and failed because the contribution conditions were not satisfied. There is no analogy or similarity between that and failure to claim at all.

12. I drew attention at the hearing to regulation 11 of the 1975 regulations, which makes special provisions relating to delay or failure in making or prosecuting a claim for unemployment benefit whereby a person may be treated as entitled to benefit and provisions relating to the period of entitlement to earnings-related supplement if a person fails to show that, in not making or prosecuting a claim for unemployment, sickness or invalidity benefit, he did not intend, by failure to acquire or establish a right to benefit, to cause a new period of interruption of employment to begin for the purposes of earnings-related supplement. The words used are "entitled" and "a right to benefit" and not to disqualification or ceasing to be disqualified. In relation to earnings-related supplement, it is often to a claimant's advantage for entitlement to depend upon the continuing period of interruption of employment rather than changing to a fresh period of interruption of employment and another tax year in which, due to unemployment or sickness, his reckonable weekly earnings might be less.

13. For the reasons stated, the claimant's appeal is dismissed.

(Signed) J S Watson  
Commissioner

Date: 10 June 1980

Commissioner's File: C.U. 444/1979

C I O File: I.O. 3088/U/79

Region: London