

computer decisions - given lapse of
time not appropriate, to take oral
evidence from Adjudication Officer.

DJM/HJD/T/CH

Commissioner's File: CSIS/60/94

SOCIAL SECURITY ADMINISTRATION ACT 1992

**APPEAL TO THE COMMISSIONER FROM A DECISION OF A SOCIAL SECURITY
APPEAL TRIBUNAL UPON A QUESTION OF LAW**

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal: Glasgow South

Case No: 553 68613

1. My decision is that the decision of the social security appeal tribunal given at Glasgow on 3 September 1993 is erroneous upon a point of law. I set it aside. I give the decision which the tribunal ought to have given, that is, that from 23 June 1993 the claimant was not required to register as available for employment as a condition of receiving income support and his disability premium is restored from that date.

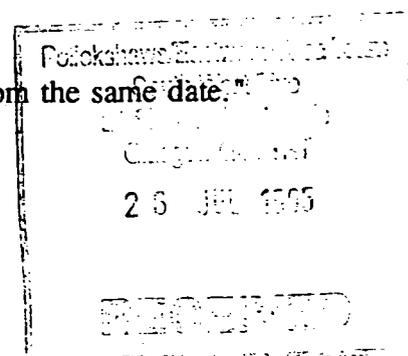
2. It appears from the papers in this case that the claimant had been in receipt of income support together with a disability premium for some time prior to 23 June 1993. The tribunal, against whose decision this appeal is taken, found the facts of the case to be stated as in an adjudication officer's summary to them at page 5 of the bundle. Paragraphs 2, 3 and 4 of that summary of facts is in the following terms:-

- "2. He has been claiming Income Support on the basis that he is unfit for work. He has no entitlement to an incapacity benefit.
3. On 8 June 1993, [the claimant] was examined by the Regional Medical Officer and was found to be capable of work. See this report at page 1 - 2.
4. On 24 June 1993, the adjudication officer decided that following the Regional Medical Officers report [the claimant] was required to register as unemployed in order to receive Income Support."

3. The decision referred to in paragraph 4 of the summary of facts is as set out on page 3 and is in the following terms:-

"[The claimant] is required to be register (sic) as available for employment as a condition of receiving Income Support as from 23 June 1993. This is because he does not fall within any of the categories of exceptions provided in Schedule 1 to the Income Support (General) Regulations.

[The claimant] is no longer entitled to the Disability Premium from the same date.



It is said in the same documents that the provisions in acts and regulations considered by the adjudication officer to be relevant were as follows:-

"Section 124 of the Social Security Contributions and Benefits Act 1992;

Regulations 8 of, and Schedules 1 and 2 to, the Income Support (General) Regulations 1987 ("The General Regulations")."

4. That decision was appealed to a tribunal. The decision of the tribunal was:-

"To refuse the appeal and uphold the Adjudication Officer."

The reasons given by the tribunal were as follows:-

"The Tribunal were not satisfied that there were any grounds for review."

It is not clear to me what review the tribunal were referring to in their reasons. It will be noted that the claimant was not present at the appeal and the chairman's note of evidence merely noted:-

"[The claimant] did not appear and was not represented. Miss Church had nothing to add to the Adjudication Officer's summary other than to point out that the RMO's report of 23.3.92 which has been lodged by [the claimant] along with a covering letter referred to a claim for Severe Disablement Allowance rather than Income Support."

The adjudication officer's submission to the tribunal did not deal with the question of review.

5. The claimant has appealed against the decision of the tribunal and that appeal is supported by the adjudication officer on different grounds. The claimant's grounds of appeal are at pages 27 and 29 of the bundle. The adjudication officer's submission is at pages 34 to 36 of the bundle. In paragraph 3 of the submission it is said:-

"The terms of the adjudication officer's decision suggest that he had not concluded that the claimant no longer satisfied the conditions of entitlement to income support, although it is difficult to see upon what grounds entitlement did continue at the time that the decision was made. The decision that the claimant was no longer entitled to disability premium would have been superfluous if entitlement to income support had ceased altogether. Therefore the adjudication officer apparently determined that the claimant's entitlement continued, albeit at a reduced rate."

6. On 30 December 1994 the Nominated Officer to the Commissioner issued the following direction:-

"Under reference to paragraphs 3 and 4 of the adjudication officer's submission dated 14 October 1994, the adjudication officer is directed to obtain and lodge as a document of the appeal, the local adjudication officer's decision on review. Said document is to be lodged within 30 days of the date of this direction."

The response to that direction was a further submission from the adjudication officer received by the Office of the Social Security Commissioners on 13 January 1995. The full terms of paragraphs 2 and 3 are as follows:-

"2. I have contacted the local office and obtained the only evidence of any change to benefit at 24.6.93 held. This is confirmation that a change of circumstances was input into the computer on 24.6.93 and a letter was issued to the claimant. There was no off-line adjudication officer's decision.

3. I enclose a screen print of the above."

The print referred to is reproduced at page 41 of the bundle. There is no explanation of its content and I am unable to interpret it.

7. Subsequent to the lodging of the computer print out the Nominated Officer made a further direction:-

"The adjudication officer is directed to consider in light of Commissioner's decision CSIS/78/93, the validity of the review which accompanied the submission undated but dispatched on 11 January 1995 (pages 40 and 41), and to make a supplementary submission within 30 days of receiving this direction.

A copy of the Commissioner's decision is attached."

In the response to the Nominated Officer's direction the adjudication officer made the following concession in paragraph 3 of his submission:-

"3. I respectfully submit the evidence thus far made available is insufficient for the purposes of establishing that a valid review has been carried out."

In paragraph 6 having quoted from paragraphs 9, 10 and 11 of CSIS/78/93 the adjudication officer:-

"6. From the foregoing, and in accordance with the submission of the AO dated 14.10.94, I respectfully invite the Commissioner to set aside the decision of 3.9.93 as erroneous in law, and remit the case to be heard afresh by a differently constituted tribunal.

7. I further respectfully submit that any new tribunal might have regard to the observations referred to in paragraph 13 of CSIS/78/93, namely it ought to be possible to call the AO who determined the questions in this case. They will be able to give oral evidence as to whether a review had been carried out, and the terms of that decision."

8. It seems to me that properly analysed there was no evidence before the tribunal who heard the claimant's appeal that there had been a review and revision of the basis of the claimant's entitlement to income support or the disability premium. The appeal was not presented to the tribunal upon the basis that there had been such a review and the tribunal did not address that

issue. Therefore in these circumstances their decision falls to be set aside as being erroneous upon a point of law.

9. The adjudication officer has been unable to place before me evidence of a review having been carried out. That was conceded by the adjudication officer in paragraph 3 of the submission dated 19 February 1995. The computer print out does not on the face of it provide evidence that there was a review. This is accepted by the adjudication officer in paragraph 3 of the submission dated 19 February 1995. There is no established valid adjudication officer's decision on review before me, though I have additional evidence in the form of the computer print out to that which was before the tribunal.

10. It was said by the Commissioner in paragraph 14 of CSIS/78/93:-

"The onus on validity is of necessity on the adjudication officer and the Department."

I am invited to remit the case to be heard afresh by a differently constituted tribunal and am told in paragraph 7 that it ought to be possible to call the adjudication officer who determined the questions in this case. It was said that such an adjudication officer would be able to give oral evidence as to whether a review had been carried out and the terms of that decision. However, standing the fact that the copy of the decision, said to have been made by the adjudication officer set out in page 3 of the bundle, does not appear to have been made under and with regard to the statutory provisions relating to review it does not seem to me to be appropriate more than 2 years after the decision made to give the adjudication officer the opportunity to prove before a tribunal that there was a decision on review given that he has been unable to do so to date. In these circumstances I have made the decision which the tribunal ought to have made at paragraph 1.

11. The appeal succeeds.

(signed)

D J May
Commissioner

Date: 21 July 1995