

Confirms our view of 189/85 (2(50)5/87

JGMI/BH

Commissioner's File: CSSB/6/86
CAO File: AO 2127/86
LO: Maryhill
LO Ref No: 611/118555

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL TO COMMISSIONER FROM DECISION OF SOCIAL
SECURITY APPEAL TRIBUNAL UPON A POINT OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal: Glasgow West

Case No: 3/20/99/12

1. My decision is that the decision of the Social Security Appeal Tribunal dated 18 September 1985 is erroneous in law and is set aside. The decision which I substitute as the decision which the tribunal should have given is that the claimant's appeal is allowed to the extent that he is entitled on review to a revised decision waiving the requirement that he be available for employment as a condition of entitlement to supplementary benefit with effect from 5 March 1984.

2. This is an appeal by an adjudication officer against the tribunal decision mentioned above. The case is one of a number of similar cases the disposal of which was delayed to await the outcome of two decisions by a Tribunal of Commissioners, namely the decisions on the Commissioner's File CSSB/189/1985 and CSSB/232/1985, both as yet unreported. Copies of the decisions of the Tribunal of Commissioners in these cases accompany this decision. Following the issue of the decisions of the Tribunal of Commissioners the claimant's request for an oral hearing in the present appeal was withdrawn.

3. The facts before the adjudication officer show that on 5 March 1985 the claimant made a request by way of review for the waiving (with backdating) of the requirement that he be available for employment as a condition of entitlement to supplementary benefit. The claimant was then aged 56 and in receipt of supplementary allowance. He was unemployed and had been unemployed for about 9 years. He was in good health and had been actively seeking work without success and was signing quarterly as available for employment. The adjudication officer refused the claimant's request under reference to regulation 6(e), (f) and (u) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981. The claimant appealed to a Social Security Appeal Tribunal.

4. Section 5 (1)(a) of the Supplementary Benefits Act 1976 provides as follows:-

"5.-(1) The right of any person to a supplementary allowance is subject except in prescribed cases, to the condition that he is available for employment,
....."

Regulation 6 of the Conditions of Entitlement Regulations contains the following material provisions:-

"6. A claimant shall not be required to be available for employment under section 5 in any week in which one or more of the following paragraphs apply and regulation 8 does not apply to him:-
.....
....."

(e) by reason of physical or mental disablement he has no further prospect of employment and in the 12 months immediately preceding has-

- (i) on average worked for less than 4 hours a week,
- (ii) been available for employment under section 5 for not less than 39 weeks,
- (iii) made reasonable efforts to find employment and not refused any suitable employment;

(f) he has no prospect of future employment and lacks the training or experience to be able to enter or re-enter employment and-

- (i) he is within 10 years of attaining pensionable age,
- (ii) he has not been in employment in the previous 10 years,
- (iii) during that period the requirement to be available for employment pursuant to section 5 has not applied and would not have applied to him had a claim been made for an allowance by or in respect of him;

.....
.....

(u) the preceding paragraphs do not apply to him but the circumstances are analogous to any circumstances mentioned in one or more of those paragraphs and in the opinion of the benefit officer it would be unreasonable to require him to be available for employment."

5. At the tribunal hearing the claimant's representative produced statistics regarding the high level of unemployment in the claimant's area and also a list of firms to whom the claimant had unsuccessfully applied for employment. It was argued that the claimant's circumstances were analogous to those in paragraph (e) and also to some of those in paragraph (f) of regulation 6 quoted above and in particular that the claimant's age was analogous to disablement in its effect on his prospects of employment for the purposes of the leading provision of paragraph (e). The tribunal unanimously allowed the claimant's appeal "waiving the requirement to register for employment with effect from 52 weeks prior to 5 March 1985, the date of claim."

Giving/

Giving reasons for their decision the tribunal explained that for the purposes of paragraph (u) the claimant's circumstances fell within paragraph (e). Their findings showed that the claimant directly satisfied paragraph (e) (i) to (iii) and their findings regarding the adverse weighting of the claimant's age showed that they considered him to satisfy the leading provision of paragraph (e) by analogy of his age with physical disablement in its effect on his prospects of employment. They separately recorded their conclusion that it would be unreasonable to require him to be available for employment.

6. Certain of the adjudication officer's criticisms of the tribunal's decision, particularly on the "age analogy" point have been overtaken and nullified by the decision of the Tribunal of Commissioners in CSSB/189/1985. See especially the ruling summarised in paragraph 23(d) of that decision. The adjudication officer has also submitted that the decision of the tribunal is inadequately explained but in my judgement the tribunal decision makes sufficiently clear the basis of their decision. In particular it is suggested that the tribunal have not explained why they found it unreasonable under paragraph (u) to continue to require the claimant be available for employment. The tribunal decision however shows that they separately considered this matter. Where, as in the present case, the qualifying ground of relief was based on the claimant having no further prospect of employment and it was found that the claimant had made unsuccessful efforts to gain employment over a prolonged period (9 years) there was in my view no need for the tribunal, provided they separately considered the issue of reasonableness, to re-iterate detailed reasons why it was unreasonable to require him to continue to be available for employment.

7. There are however some errors in the tribunal's decision. The decision refers to the requirement "to register for employment" whereas of course the true issue was one of availability for employment. The tribunal also referred in their reasons to the claimant's partial satisfaction of the conditions of paragraph (f). In decision CSSB/189/1985 the Tribunal of Commissioners held that if analogous circumstances are founded on for the purposes of paragraph (u) they must if sustained enable the claimant to satisfy either directly or by analogy all qualifying conditions necessary to satisfy one (or more) of the previous paragraphs. It was of course enough in the present case that the tribunal found the conditions of paragraph (u) satisfied by the claimant meeting directly or by analogy all the conditions of paragraph (e). Furthermore there is an inconsistency between the tribunal's clear decision to backdate the waiving of the requirement for a period of 52 weeks from 5 March 1985 and their reference in their reasons for the decision to allowing backdating "for the full statutory period under Regulation 87(1)." See decision CSSB/232/1985, paragraph 10.

8. In the circumstances I have decided that the proper course is to set aside the tribunal's decision as erroneous in law in the respects mentioned in the immediately preceding paragraph but to substitute my own decision to the same effect, making the necessary corrections. The facts have sufficiently been found to enable me to do so and it is expedient to do so in this case. My substituted decision is as set out in Paragraph 1 above.

9. The appeal of the adjudication officer is upheld but only to the limited extent indicated herein.

(signed) J G Mitchell
Commissioner
Date: 1 April 1987