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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: MRS ANNE WOODMAN

Social Security Appeal Tribunal: Dumfries

Case No: 517 0449

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal dated 22 May 1990 is erroneous in law and is therefore set aside. Having regard to my powers under section 23(7) of the Social Security Administration Act 1992 I have decided that the decision which the said tribunal should have given was that the claimant was not precluded from receiving unemployment benefit during her days of unemployment between 11 December 1989 and 6 January 1990 (both dates included) under regulation 7(1)(o) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983, and that no forward disallowance under regulation 18(3) of the Social Security (Claims and Payments) Regulations was warranted.

2. The claimant was formerly employed at the Woolly Mill in Langholm, Dumfriesshire. About the end of November 1989 the claimant's employers introduced short-time working.

3. I have before me appeals from the claimant and 5 other employees regarding their entitlement to unemployment benefit during the days when they were not employed because of the introduction of short-time working. It will only be necessary for me to give a full decision in regard to this claimant. My decision in regard to the other claimants can be given by references to this decision. The claimant claimed unemployment benefit during her days of unemployment from 6 December 1989 onwards, and she was given a book of postal coupon forms (UB25PF). She worked on Monday and Tuesday 11 and 12 December 1989, and she was paid £49.13 for working these days. She was thereafter unemployed until she worked from Wednesday 20 December 1989 until Saturday 23 December 1989 - she was paid £70.03 for working these days. She received holiday pay for the period from 25 December 1989 to 29 December 1989 amounting to £108.75 and for the period 1 and 2 January 1990 amounting to £43.05.

4. Regulation 7(1)(o) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations provides as follows:-

"Subject to regulation 9, a day shall not be treated as a day of unemployment in relation to any person, if -

- (i.) it falls within a period of 7 days (including Sundays) ending on the week-day corresponding to the particular week-day specified in a written notice last given to him by the Secretary

of State for the purpose of his claiming unemployment benefit;
and

(ii.) his earnings in respect of that period are equal to or exceed the weekly lower earnings limit for the time being specified for class I contributions under the Act."

Said regulation 9 has no application in the present case. The said regulation 7(1)(o) was added to the said 1983 Regulations with effect from 10 December 1989 by the Social Security (Unemployment, Sickness and Invalidity Benefit) Amendment No 3 Regulations 1989. The weekly lower earnings limit at the time under consideration was £43.00. It will be seen that during the said weeks from 11 December 1989 onwards the claimant was in receipt of earnings of more than £43.00. Said regulation 7(1)(o) was clearly an additional method of precluding certain claimants from receiving unemployment benefit introduced as an alternative to the full extent normal rule (regulation 7(1)(e) of the said 1983 Regulations) or the normal idle day rule under section 17 of the Social Security Act 1975 (now contained in section 57 of the Social Security Contributions and Benefits Act 1992). As already stated regulation 7(1)(o) was obviously designed to preclude certain part-time workers receiving unemployment benefit during their days of unemployment if their weekly earnings exceeded the above-mentioned statutory limit.

5. The local adjudication officer decided that the claimant was not entitled to unemployment benefit during her days of unemployment from 11 December 1989 to 6 January 1990 because of the provisions of said regulation 7(1)(o). The adjudication officer also decided that if any further claim was made for a day falling in the period from 7 January 1990 to 26 January 1992 and on that day the grounds of his said decision had not ceased to exist, his said decision was to be treated as a disallowance of the said claim. The claimant appealed against that decision to a social security appeal tribunal. A hearing took place before a tribunal on 22 May 1990. At that hearing the claimant's solicitor stated that there was no dispute regarding the days on which the claimant had not been working or the earnings received by the claimant. The contention put forward on the claimant's behalf was that the claimant had never received a proper written notice from the Secretary of State which she should have received under the said provisions of said regulation 7(1)(o). This case turns entirely on the issue whether the claimant falls to be regarded as having received the appropriate statutory notice under regulation 7(1)(o). If she did then it is not in dispute that the claimant was not entitled to unemployment benefit during the said days on which she was not employed. If she did not receive the appropriate statutory notice, then in my view she is not precluded from receiving unemployment benefit in respect of the days on which she not employed under regulation 7(1)(o).

6. With regard to the issue whether the appropriate statutory notice was given to the claimant the following points fall to be noted:-

(a) At the beginning of December 1989 the employers gave notice to the Department of Employment when the claimant and her fellow employees would be laid off work. Apparently nothing further occurred in this connection until January 1990.

(b) The claimant then received apparently through her employers the usual claim forms for unemployment benefit, i.e. forms UB25PF. The 3

claim forms which are before me contained claims for unemployment benefit in the periods 6 December 1989 to 9 December 1989, 10 December 1989 to 23 December 1989 and 24 December 1989 to 6 January 1990. These dates were apparently inserted on these forms by an official at the local Employment Office in Annan Dumfriesshire. There is no information before me regarding who that official was. The said dates on these forms 9 December 1989, 23 December 1989 and 6 January 1990 were all Saturdays. The said forms stated that they had to be signed and posted on the last claim date shown on them. The claimant did not in fact sign the forms until 11 January 1990.

7. The claimant presumably received unemployment benefit in respect of the days 6 to 9 December 1989 since regulation 7(1)(o) did not come into effect until 10 December 1989. As already explained she did not receive unemployment benefit in respect of the days when she was not employed from 11 December 1989 onwards.

8. At the time the said forms were signed by the claimant neither the claimant nor her employers appreciated that regulation 7(1)(o) was going to be used by the Department. At the hearing before the social security appeal tribunal a representative of the employers stated that if she had known the effect on unemployment benefit of said regulation 7(1)(o), she could have rearranged the working schedule to suit the regulations. The findings of the tribunal on questions of fact material to their decision were as follows:-

"1. The facts stated in the papers were accepted by all parties.

2. That notice was given as stated by Mrs Kerr [the adjudication officer] was reluctantly accepted by the Tribunal, but it was noted the purported notice did not actually specify a particular weekday as required in the Regulations."

The tribunal disallowed the claimant's appeal.

9. The claimant's solicitors on her behalf applied for leave to appeal to a Commissioner on a question of law against the tribunal's said decision. That application was granted by the chairman of the tribunal. The grounds of the application were as follows:-

"The form UB25PF on which the Adjudication Officer founded did not constitute the written notice required to be given by virtue of the Amendment No 3 Regulations 1989 to Regulation 7 of the Unemployment, Sickness and Invalidity Benefit Regulations 1983 before days are not to be treated as days of unemployment in as much as:-

(1) It was not sent to me but to my employers.

(2) It did not purport to be given by or on behalf of The Secretary of State and was not signed by or on his behalf.

(3) As noted by the Tribunal it did not specify a weekday but simply gave a date entered by some person unknown; and

(4) It was not given to me in advance of my application for benefit.

It failed to satisfy the requirement on all or any one of these grounds."

10. I decided to direct a hearing in respect of the appeals brought by the claimant and the other 5 claimants. At the hearing before me on 5 November 1992 the legal representative of the adjudication officer now concerned with the case maintained that the tribunal had found as a question of fact that the claimant and her fellow employees had received the appropriate statutory notice required under regulation 7(1)(o). He contended that it was therefore not open to me to decide that the appropriate notice had not been given. I do not accept that submission. In my view the question whether the relevant statutory notice was given is a question of law, and it is clearly open to me to decide whether that statutory notice was in fact given. The said legal representative also contended that the said usual claim forms mentioned above fell to be regarded as appropriate statutory notices under regulation 7(1)(o). I am also not prepared to accept that submission. Under said regulation 7(1)(o) a written notice had to be given to the claimant by the Secretary of State, and in my view that was not done in the present case. I support the appeal grounds put forward on the claimant's behalf and set forth in paragraph 9 above. In my view, it was clearly of importance to the claimant that she should be given a clear and proper notice from or on behalf of the Secretary of State. No such notice was given in my opinion. If such a notice had been given, it would have been open to the employers, as was suggested in the present case, to rearrange the working schedules to prevent the claimant and the other employees from being precluded from receiving unemployment benefit under regulation 7(1)(o). Having reached the said conclusions it follows that the claimant was not precluded from receiving unemployment benefit because of the provisions of regulation 7(1)(o). The said tribunal's decision was therefore erroneous in law, and I have therefore reached the decision set forth in paragraph 1. above. I would mention that the claimant's employers apparently went into receivership, but I do not have any information regarding when that occurred.

11. The claimant's appeal is allowed.

(signed) Douglas Reith
Commissioner
Date: 25 November 1992