

Non-remit

CIS/16583/1996

DW/f

**SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992
SOCIAL SECURITY ADMINISTRATION ACT 1992**

**APPEAL FROM A DECISION OF THE SOCIAL SECURITY APPEAL
TRIBUNAL ON A QUESTION OF LAW**

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Claimant :

Tribunal :

Ref No :

1 I dismiss the claimant's appeal, brought by leave of the Commissioner, against the decision of the Euston social security appeal tribunal on 9 May 1996 that the claimant is not entitled to income support for any day before 11 December 1995. This is because the decision of the tribunal is not erroneous in law.

2 The claimant claimed income support on the standard form B1, which was, it has been assumed, received by the Benefits Agency on 27 December 1995. His claim was accepted with effect from 11 December 1995, and income support was paid from that date. By a letter dated 20 December 1995 and posted to the Department with the B1, the claimant asked for the claim to be backdated to 1 April 1994. The backdating was refused by the adjudication officer and, on appeal, by the tribunal. The claimant now appeals against the decision by the tribunal to dismiss his appeal.

3 There are two elements to this claim. The first is the extent to which a late claim for income support can be made at all. The second is to establish whether there is good cause for a late claim within the permissible period. Both depend on identifying precisely the date on which the late claim was made, and that has become an issue in this case.

The date on which a late claim is made

4 The tribunal, acting on the agreement of the parties without further discussion, dealt with the late claim by looking back to 11 December 1994 and no further. This was based, at least in part, on the submission of the adjudication officer to the tribunal that the claim was made from 11 December 1995. The adjudication officer now acting submits that this is an error, and that consequently the tribunal's decision is erroneous in law.

5 Section 1 of the of the Social Security Administration Act 1992 provides that:

“(1) Except in such cases as may be prescribed, and subject to the following provisions of this section and to section 3 below, no person shall be entitled to any benefit unless, in addition to any other conditions relating to that benefit being satisfied -

- (a) he makes a claim for it in the manner, and within the time, prescribed in relation to that benefit by regulations ...; or
- (b) he is treated by virtue of such regulations as making a claim for it.

(2) Where under subsection (1) above a person is required to make a claim or to be treated as making a claim for a benefit in order to be entitled to it -

- (a) if the benefit is a widow's payment, she shall not be entitled to it in respect of a death occurring more than 12 months before the date on which the claim is made or treated as made; and
- (b) if the benefit is any other benefit except disablement benefit or reduced earnings allowance, the person shall not be entitled to it in respect of any period more than 12 months before that date, except as provided by section 3 below.”

Section 3 is not relevant in this case. The adjudication officer now acting submits that it is subsection (2) that provides the time limit that operates in this case.

6 The regulations mentioned in subsection (1) are the Social Security (Claims and Payments) Regulations 1987 as amended from time to time. Regulation 6 of those regulations deals with the date of claim. It provided at the relevant time, so far as relevant to this claim:

“(1) Subject to the following provisions of this regulation, the date on which a claim is made shall be-

- (a) in the case of a claim which meets the requirements of regulation 4(1), the date on which it is received in an appropriate office;
- (b) in the case of a claim which does not meet the requirements of regulation 4(1) but which is treated under regulation 4(7) as having been duly made, the date on which the claim was received in an appropriate office in the first instance.

(3) In the case of a claim for income support ... where the time for claiming is extended under regulation 19 the claim shall be treated as made on the first day of the period in respect of which the claim is, by reason of the operation of that regulation, timeously made.”

7 Regulation 4 deals with the form in which (or on which) a claim is to be made. In this case the adjudication officer, summarising the relevant facts to the tribunal, stated that the claimant registered for unemployment on 11 December 1995. He was issued with form B1 on 15 December, and the form

was said to have been received on 27 December. The officer added that the Secretary of State treated the claim as having been made on 11 December, and income support was awarded from that date. This suggests that the claim was handled under regulation 4(7). That provides, in cases such as this, that the claimant may be asked to complete the appropriate claim form. It also provided at the relevant time (so far as relevant here) that :

“ ... if the form is received properly completed within one month ... from the date on which it is ... supplied, the Secretary of State shall treat the claim as if it has been duly made in the first instance.”

This suggests that the date of this claim is that determined by regulation 6(1)(b), subject to regulation 6(3) and regulation 19.

8 Regulation 19 provides for the time for claiming benefit. Under paragraph (1), the prescribed time for claiming income support is the first day of the period in respect of which the claim is made (Regulations, Schedule 4, item 6). The regulation also provided, at the relevant time and as relevant to this claim:

“(2) Where the claimant proves that there was good cause, throughout the period from the expiry of the prescribed time for making the claim for the failure to claim [income support] before the date on which the claim was made the prescribed time shall, subject to [section 1 of the Social Security Administration Act 1992] and paragraph 4 ... be extended to the date on which the claim is made.

(3) Where a claim is made for [income support] and the Secretary of State certifies that to do so would be consistent with the proper administration of the Social Security Acts, the prescribed time shall be extended -

(a) ... by such period as may be specified in the certificate, but not so as to extend the prescribed time for claiming to more than one month...

(4) The prescribed time for claiming income support ... shall not be extended under paragraph (2) so as to give entitlement to benefit in respect of any period ... more than 12 months before the date of claim.”

The date on which this late claim was made

9 Regulation 19 therefore provides that the “prescribed time” for the claimant’s claim can be extended but that the claim cannot be considered in respect of any period more than 12 months after the “date of claim” made by the claimant. In this case, is the date of claim 11 December 1995, as the tribunal accepted on the basis of the submission of the adjudication officer then acting, or 27 December 1995, as the adjudication officer now acting submits, or

some other date? This raises two problems: the relevant date, and the precise "claim" to which that date is applied.

10 I raise the question of "some other date" because in 1995 20 December (the date on the letter and claim form) was a Wednesday. The local DSS office is likely to have been shut from 23 to 26 or 27 December, and possibly for some other part of the period between 20 December and 27 December (it was in Scotland). Given the disruption to, and special arrangements for, postal services during the Christmas period, it is quite likely that the claimant's claim arrived in Glasgow before 27 December but at a time when the office was shut, or was held by the Post Office until the office next opened. This depends on the local arrangements for postal delivery, of which I know nothing. It would also depend on whether the letter was transmitted by first class or second class post. As the claimant lived in central London, and the address of his local office was a Post Office box number in Glasgow, the claimant had no realistic option but to use the postal services.

11 The date on which a claim is received for the purposes of regulation 6 is the actual date of receipt. The principles on which the actual date of receipt is to be determined were discussed in Decision R(SB) 8/89. That decision stresses the importance of establishing the actual date of delivery, taking into account whether the delivery was part of the normal course of delivery of post, or whether some special arrangement operated. The address in this case is a Post Office Box number. It seems to me, in absence of any further facts, that there is at least an argument that the claim was "received in an appropriate office" when the Post Office received it in Glasgow, not when the Post Office subsequently transferred the claim to the Department office. Whether that is so is a question of fact to be determined on the principles set out in Decision R(SB) 8/89. If therefore the date of claim is the date on which it was received in the appropriate office, as submitted by the adjudication officer now acting, then that date has to be determined. Without more, the date cannot be assumed to be 27 December in this case.

12 Was the late claim for the period before 11 December 1995 part of the same claim as the claim from that date? If it was a separate claim from the current claim, it may be that the "date of claim" for the late claim can be determined separately from the current claim. In this case, the claimant returned the claim form B1 together with a letter of the same date and made a single claim, both current and late. This was treated as one claim by the adjudication officer because the same decision awarded income support from 11 December 1995 and refused income support before that date because of an absence of good cause until that date.

13 I therefore take it that the current and late claims are part of the same claim, and that they therefore have the same date of claim unless the law requires otherwise. That is also consistent with the decision of the

Commissioner in R(SB) 56/83 (where attention is drawn in paragraphs 12 and 13 to the absence of a specific provision for late claims in a claim form such as that used by the claimant) as developed in the decision of the Tribunal of Commissioners reported as R(SB) 9/84. The decision of the Tribunal of Commissioners also made it clear that "the Secretary of State must in our view in the absence of any challenge at the time be deemed to have been satisfied that it was made in sufficient manner for a claim for supplementary benefit and similarly the supplementary benefit officer must be taken to have been satisfied that it constituted such a claim." The references to supplementary benefit are now obsolescent, and the underlying statutory authority has changed, but the same issues arise for income support.

14 If the date of claim is accepted by the Secretary of State as being 11 December for the claimant's current claim, should that not also be the date of claim for the late claim? The adjudication officer making the submission to the tribunal assumed this. The adjudication officer now acting submits it is not, relying on section 1(2)(b) of the Social Security Administration Act 1992. However, section 1(2)(b) refers to "that date", not the date of claim, and "that date", in subsection (2)(a) is "the date on which the claim is made or treated as made". In this case, that is 11 December 1995. I do not therefore accept that the authority provided by the adjudication officer now acting supports the submission made.

15 Regulation 19(4) also provides a time limit, and this appears to suggest the answer submitted by the adjudication officer now acting. In *Meshers and Wood* (1995 edition), the commentary on regulation 19(4) argues that the "date of claim" is the actual date of claim and not, as in section 1(2), the actual or deemed date of claim. This is reinforced, according to the commentary, because regulation 19(4) prevents the extension of the time for claiming under regulation 19(2), which is a precondition for the operation of regulation 6(3). I do not think this follows.

16 The phrase "date of claim" in regulation 19(4) seems to me to be an abbreviation. It is not given any separate definition suggesting that it is a separate term in these regulations. Its only other use is as the marginal note to regulation 6, and it is in my view significant that the body of regulation 6 does not use (and as far as I can tell, never has used) the phrase. The phrase used in regulation 6(1) and in regulation 19(2) is "the date on which the claim is made". In regulation 6(1) that phrase clearly includes a date on which a claim is treated as made, and that is the natural meaning in regulation 19(2) as well. This is the same sense as the term "that date" in section 1(2)(b) of the Social Security Administration Act 1992. In my view, "date of claim" in regulation 19(4) is to be read as an abbreviation for the phrase "date on which the claim is made" in regulation 6. It therefore carries the same meaning as that phrase. This means that it is therefore consistent in meaning with the term "that date" in section 1(2)(b). I am reinforced in this conclusion because it avoids completely

the complexities of determining the actual date that I reviewed in paragraphs 10 and 11. It also achieves a fairer result for claimants in the position of this claimant who, as a matter of practicality, face an inevitable and possibly costly delay in delivering their claim forms to their local offices as compared with those who can if they wish deliver the claims by hand. In this case, that could have resulted in the loss of over two weeks' benefit. I also note that Partington, in *Claim in Time* (3rd edition, p 56) assumes that the relevant date is the date on which the claim is made or treated as made).

17 My conclusion is therefore that the "date of claim" in regulation 19(4) is in this case 11 December 1995, as is "that date" for the purposes of section 1(2)(b) of the 1992 Act. It follows that I do not find the tribunal in error of law in reaching the decision it did to review the claim made by the claimant from 11 December 1994.

Good cause for the late claim

18 The ground of appeal on behalf of the claimant is that the tribunal erred in not finding good cause for the late claim from 11 December 1994. The claimant had argued his case for good cause at length in making the original claim, and the claimant's representative also argues the point at length in the grounds for appeal. The adjudication officer now acting supports the claimant's appeal on the ground that the tribunal has stated its reasons inadequately.

19 The tribunal accepted that the claimant did not know he had a right, as a self-employed person, to claim income support until he was told that he might be able to claim by a firm of solicitors. That this is so does not appear in doubt. The question is, however, whether it should have been so. The tribunal did not accept that the claimant was relying, or should have relied, on advice from another firm of solicitors. There is considerable detail, including correspondence, on the file about these aspects of the claim. This was considered by the tribunal, and I do not find any error of law in the way that these issues were handled.

20 The other issue before the tribunal were whether, given the claimant's accepted ignorance of his rights, he did, or should have, made other enquiries or sought other advice. In this case, the claimant was a French lawyer, and had a working knowledge, it would seem, of the French social security system. The French social security system, as I understand it, makes special but limited provision for the self-employed, and the arrangements for lawyers are individual to that profession. This is radically different to the universal provision of state support for the self-employed in the United Kingdom, including both universal obligation to contribute and universal entitlement to benefit.

21 The question was whether, after living and working in this country for over 20 years and for most of his working life, and as a legally trained

professional person, the claimant should have assumed that he had no rights in the United Kingdom because he had no rights, or so he understood, in France. Further, this was so even though he was, or should have been, paying social security contributions in this country and was possibly also benefiting from the use of the national health service (which in France is part of the social security system). The tribunal has considered this issue, and has explicitly considered if the claimant was acting reasonably in the enquiries he did and did not make. It found that he was not. I do not accept the submission that in reaching this conclusion the tribunal failed to act judicially or to reach a decision for which there is no evidence. Nor do I accept that the tribunal has failed to explain its decision adequately.

22 To satisfy the tribunal, the claimant had to show good cause for his late claim throughout the whole of the period of delay. It may at first have been reasonable for him not to have made enquiries, or to have waited for the hoped-for resolution of his problems. Indeed, the adjudication officer accepted that good cause might be shown up until October 1994. However, that did not help the claimant, who had to show good cause throughout the period from December 1994 to December 1995 to make good the late claim. He sought to do so based on his ignorance.

23 Both the claimant's representative and the adjudication officer now acting comment on previous Commissioner's decisions on this issue. Particular attention is drawn to Decision R(P) 1/79. That decision stressed that a priori approaches to the question of good cause are wrong, and that a tribunal should take a view on all the facts. That is what this tribunal has done. It has heard from the claimant and his representative. It has studied the written submissions. It has also studied correspondence from the claimant and two firms of lawyers. In short, it had considerable evidence before it, and it has looked at all this evidence, and has considered in the light of it whether this claimant had good cause throughout the period in issue for a late claim. It has decided he did not. It has also explained why it decided he has not. I do not accept that in doing so it made any error of law in reaching its decision or in stating it. It may be that others considering this evidence might have reached another decision, but that is not an error of law.

24 I therefore decide as set out in paragraph 1.

David Williams
Commissioner

19 March 1998