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DGR/SH/13

Commissioner's File: CIS/338/1990

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the social security appeal tribunal given on 12 January 1990 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned below.

2. This is an appeal by the claimant, brought with the leave of the Chief Commissioner, against the decision of the social security appeal tribunal of 12 January 1990.

3. The question for determination was whether the claimant was disentitled to income support for the inclusive period from 11 October 1989 to 7 November 1989 because he failed, without good cause, to comply with the second written notice, issued within 14 days from the date specified in the first written notice, requesting him to attend an interview at a prescribed place in connection with his employment prospects, and in consequence could not be treated as available for employment. In the event, the tribunal, upholding the decision of the adjudication officer, decided that the claimant was so disentitled.

4. The tribunal gave the following reasons for their decision:-

"It was not disputed that the claimant did not attend any interviews fixed for [27 June, 30 July, 8 September, 27 September and 11 October 1989] until 8 November 1989. When the claimant did not attend the interview of 27 September 1989, the second notice was sent to him on 3 October 1989 and the claimant did not attend. Consequently, unless he can show good cause for not attending this interview on 11 October, he is not entitled

to Income Support (see S.20 of the Social Security Act 1976 and Reg 8 and 10 of the Income Support (General) Regulations 1987). The onus is on the claimant to show that there was good cause for his failure to attend the interview and he relies on the fact that a neighbour telephoned on the day to say that he could not attend. Even if the neighbour did make this telephone call, the tribunal is not satisfied that this in itself constitutes good cause. The tribunal took note of the fact that the claimant was called to 5 interviews between 27 June 1989 and 11 October 1989 and did not attend any of them, and, although he states that he always had a neighbour to ring for him, there is only record of this having happened on one occasion. There is no record that this happened in relation to the appointment of 11 October 1989. Although the claimant at the hearing today produced the letter "KLG2" the tribunal is sceptical about its validity. There was no doubt at all in the tribunal's mind that the letter was actually written by the claimant. Whether the signature is that of Mrs Gower, or that of the claimant, is not clear, but even giving the claimant the benefit of this doubt, the tribunal is not satisfied that he has shown good cause for failing to attend the interview on 11 October 1989. It is significant in the eyes of the tribunal when benefit was stopped the claimant promptly contacted the Department, obtained another appointment and was able to attend. The tribunal is not convinced that, on every occasion, when he was due to attend interview, his leg flared up unexpectedly. No medical evidence was produced to support this other than the letter couched in rather vague terms from Dr. Rees. All in all, the tribunal did not consider the claimant to be a convincing witness. He has shown no enthusiasm for attempting to make an appointment with the Department of Employment when he clearly knew that they wished to interview him. It was only when his Income Support was stopped that he put himself out to attend an interview, and the tribunal is satisfied that the reason for this was to re-entitle himself to Income Support. It is for these reasons that the tribunal determines that the claimant has not discharged the onus of proof that he has to satisfy the tribunal that he has shown good cause."

5. In my judgment, the tribunal have gone into this matter with a commendable thoroughness, and I do not see how their decision could be challenged on the grounds of appeal relied upon by the claimant, namely breach of the rules of natural justice, and inadequate and incorrect findings of fact. The tribunal have explained exactly why they reached the conclusion they did, and, in my judgment, they were fully entitled on the evidence to reach that conclusion.

6. However, the adjudication officer now concerned has very fairly point out one respect, not raised by the tribunal, in which it could be said that the tribunal erred in point of law. He submits as follows:-

" 6. The decision of the tribunal, however is erroneous in

law in that they have failed to consider whether the claimant could be exempted from the requirement to be available for employment in accordance with regulation 8(3) of the General Regulations. In my submission the adjudication officer originally concerned with this case has incorrectly applied the law in relation to regulation 8(3). The claimant's availability for employment has been determined under regulation 10 of the General Regulations and as paragraph 1(e) of regulation 10 applies to him he is not to be treated as available for employment. Regulation 9(1) provides circumstances where a person is treated as available for employment; the opening sentence however excludes all cases to which regulation 10 applies. Therefore, the person cannot be treated as available under regulation 9(1) if any of the sub-paragraphs of regulation 10(1) apply to him. In this case, consideration should be given to regulation 8(3) and findings of fact must be made as to whether the claimant would suffer hardship unless income support is paid for the period in question."

I accept that submission.

7. It follows from what has been said above that I must set aside the tribunal's decision on the ground that they failed to consider regulation 8(3). The new tribunal, which must be differently constituted from the old, must consider the whole matter afresh, with particular reference to regulation 8(3).

8. Accordingly I allow this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 3 February 1992