JMH/SH/LB/1W

Commissioner's File: CU/1696/95

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

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 SSAT was erroneous in point of law. I set it aside and remit the case for re-hearing in front of a differently constituted tribunal. This is an appeal with the leave of the Commissioner from the decision of an SSAT dated 14.1.94.   The claimant had been employed but lost her employment on 19.2.93.   She did not claim unemployment benefit until 7.7.93 and this case involves a claim for backdating from 5.7.93 to 19.2.93. That claim was refused by the AO and, on appeal to the tribunal, was rejected.

2.   The claimant had been receiving family credit.   Her reasons why she did not claim unemployment benefit earlier are set out in her own words in the appeal form at T11:-

"I did phone Free Phone DHSS to ask was there any benefits that I was entitled to because of having less money to live on I was told no, as the law on social benefits only allows you a limited amount of money to live on. So this is why I waited until my family credit was nearly finished before applying for income support, they wrote me a letter telling me to go to the Unemployment Benefit Office."

Then before the tribunal she said:-

".... I am not familiar with social security rules. Prior to my last job I was working as a bar maid and received family credit. When I changed jobs to shorter hours and lower income my family credit remained the

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same. I rang the DSS Free Phone to ask if there was any other entitlement that I could claim and was told no. When I then lost my job I assumed that I couldn't claim anything else until the family credit ran out. It did not occur to me to ring the DSS again. The DSS wrote to me in August 1993 to say I was entitled to unemployment benefit but it appears that that was a computer error of which I was subsequently notified."

The tribunal found as a fact:-

"She [the claimant] had not claimed unemployment benefit at an earlier date because she thought that she was not entitled to it while she was still receiving family credit. However, she had not made any enquiries as to her entitlement after she had lost her job."

In their reasons the tribunal found:-

"It is the duty of the claimant to make reasonable enquiries as to possible entitlement and as the appellant had not done so the tribunal do not consider that she had cause for her late claim."

3.   It seems to me that the point is arguable, but I am personally inclined in cases where - as would appear to be the case here - the claimant apparently holds a firm belief that she is not entitled to a particular benefit or any other further benefit, it is incumbent on the tribunal to inquire if the belief was based on solid ground. If it were, then a claimant might well be able to show "good cause" for late application. I prefer the view expressed by the Commissioner in CS/124/89 as follows:-

"Where ignorance is alleged, the question must be whether it is reasonable to expect the claimant to have made enquiries. As Mr Jones [for the CAO] submitted, a person who believes that he is not entitled to benefit cannot be expected to make enquiries if his belief is based upon solid ground.   In such a case the question becomes whether his mistaken belief was reasonably held ..."

In my judgment the tribunal should have followed that dictum as should the new tribunal.

4.   The AO supports the appeal and in paras 10 and 11 of his submissions to me submits that the reasons found by the tribunal for their decision was really a conclusion and they failed to establish the circumstances surrounding the claimant's reasons for believing she would not be entitled if she had claimed. This is in substance the same point which I

have dealt with in para 4 above.   Accordingly I accept that submission.

5.   My decision is therefore as set out in para 1 above.

(Signed)   **J M HENTY**
                Commissioner

(Date)   25 July 1996