

JBM/SH/5/MD

COMMISSIONER'S DECISION  
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Commissioner's File: CU/182/1985

C A O File: AO 4539/UB/85

Region: North Western

**SOCIAL SECURITY ACTS 1975 TO 1985  
CLAIM FOR UNEMPLOYMENT BENEFIT  
DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. My decision is that the claimant is not disentitled by regulation 7(1)(e) of the Social Security (Unemployment, Sickness and Invalidity Benefits) Regulation 1983 (the 1983 Regulations) from receipt of unemployment benefit for 11, 13, 15, 18, 20, 22, 25 and 29 December 1984 and 1, 3 and 5 January 1985 and that accordingly the forward disallowance imposed by the adjudication officer for the period 7 January 1985 to 21 January 1986 lapses.
2. A preliminary point arises in that the entries in Boxes 2 and 4 of Form AT3, the record of the appeal tribunal decision, breach the provisions of the Social Security (Adjudication) Regulations, regulation 19(2)(b). However I have a discretion to decide the appeal myself which I now proceed to do.
3. The claimant was employed full-time as a nurse from October 1982 to November 1984. On 3 December 1984 she started working as a nurse at the same hospital part-time on Monday, Wednesday and Friday mornings in accordance with a statement of terms and conditions of service dated 29 October 1984. She claimed unemployment benefit on 11 December 1984. In answer to enquiries the claimant stated that she had reduced her hours in nursing in order to seek more appropriate full-time employment. She indicated that she had obtained a degree in 1980 and had applied for other positions, so far unsuccessfully.
4. On 21 January 1985 the adjudication officer decided that unemployment benefit was not payable for 11, 13, 15, 18, 20, 22, 25 and 29 December 1984 and 1, 3 and 5 January 1985 because the claimant regularly worked for the same number of days in a week for the same employer or group of employers and she was employed to the full extent normal in the weeks in which those days fell. He also gave a forward disallowance for days falling in the period 7 January 1985 to 21 January 1986.
5. The claimant appealed to the appeal tribunal. In her grounds of appeal she stated that she had returned to nursing after obtaining her degree because of necessity and that she had reduced her hours temporarily not only because full-time nursing was restricting other job opportunities but because its pressures were having an adverse affect on her health. At the appeal tribunal the claimant gave evidence that she had reduced her working hours because of ill-health. She also stated that economic circumstances dictated that she should have a full-time job. The tribunal found that as she chose the reduced hours which she worked

from the beginning of December 1984 regulation 7(1)(e) of the 1983 Regulations applied to her immediately.

6. Regulation 7(1)(e) of the 1983 Regulations provides as follows:-

"(e) Subject to paragraph (2) a day shall not be treated as a day of unemployment if on that day a person does no work and is a person who does not ordinarily work on every day in a week (exclusive of Sunday or the day substituted for it by regulation 4) but who is, in the week in which the said day occurs, employed to the full extent normal in his case, and in the application of this sub-paragraph to any person no account shall be taken, in determining either the number of days in a week on which he ordinarily works or the full extent of employment in a week which is normal in his case, of any period of short-time working due to adverse industrial conditions."

Regulation 7(2) provides:

"(2) Paragraph (1)(e) shall not apply to a person unless -

- (a) there is a recognised or customary working week in connection with his employment; or
- (b) he regularly works for the same number of days in a week for the same employer or group of employers."

7. Turning first to regulation 7(2), the claimant had a contract of employment running from 3 December 1984 and providing for her to work 15 hours per week on Monday, Wednesday and Friday as a staff nurse. This information is confirmed by the claimant on Form UB567D. Further I have in the case papers records from the unemployment benefit office showing details of the periods actually worked by the claimant. Accordingly on the evidence I find that not only was there a recognised or customary working week in connection with the claimant's employment but that she also regularly worked for the same number of days in a week for the same employer. I accordingly turn to consideration of regulation 7(1)(e).

8. The effect of this regulation has recently been considered by a Tribunal of Commissioners in the decision on Commissioner's file: CU/255/84 and by the Court of Appeal in Riley v. The Adjudication Officer (Appendix to R(U)2/86).

In the Riley case Slade L.J. outlined the principles to be applied by the adjudicating authority in determining whether the claimant did not "ordinarily work on everyday in a week" and was employed "to the full extent normal in his case". He stressed that regard to the nature and terms of the claimant's part-time employment was not sufficient and that it was necessary for the adjudicating authority to look forward as well as backward. Slade L.J. went on to deal with the actual case which was before the Court of Appeal:-

"In the present case, in the absence of any finding by [the Commissioner] that the appellant on 1 March 1983 had adopted his new part-time occupation with the intention of making it henceforth his normal occupation, the learned Commissioner should, in my opinion, have directed her mind to the question whether or not the reasonable inference from all the evidence was that the employment on 1 March 1983 was in truth of a stop-gap nature: (see and compare paragraphs 4 and 5 of Decision R(U)30/53). For this purpose the nature and terms of his employment were, of course, relevant. However for this purpose she should, in my opinion, also have considered, and taken into account (inter alia) what had been the appellant's pattern of work over the one year (or such other period as she thought more appropriate) which immediately preceded 1 March 1983. I think she also should have attempted to assess his working

prospects for the immediately foreseeable future."

Accordingly in considering the claimant's future the adjudicating authority is required to consider whether the claimant's present pattern of work is likely to be permanent or transitory:

"If, as in Decision CU/255/1984, there is some fairly clear evidence about what is likely in the future, this may well be conclusive."

In considering the past, the adjudicating authority must consider the claimant's past history of both work and unemployment:

"But often such evidence [as to what is likely in the future] will not be available. Whether or not it is available, I do not see how the Commissioner can properly fail to pay attention also to the claimant's past history of both work and unemployment.. the effect of such evidence will, of course, differ from case to case. Evidence of past regular full-time work will, I think, never be wholly irrelevant. But if, as in decision CU/255/1984, full-time work is succeeded by a long period of unemployment, it may carry little weight. If, on the other hand, there is evidence of full-time employment over several years finishing only a short time before the part-time employment starts, this may be strong evidence that the part-time employment has not yet become the normal pattern of work for the particular employee and is properly to be regarded as "stop-gap" employment in his particular case."

9. In the present case although the claimant chose to start part-time work when she did the evidence does not support a finding that it was with the intention of making it henceforth her normal occupation. Her intention was to seek more appropriate full-time employment, appropriate both to her qualifications and her state of health. It is therefore necessary to have regard to the claimant's past history of work and her proposals for the immediately foreseeable future. As to the past the claimant had been employed full-time from October 1982 until she took up the part-time work. The only evidence as to what was likely in the future available to the tribunal was that the claimant was actively seeking full-time work but this does not assist her greatly. The claimant did however succeed in starting full-time self-employment in October 1985, having had to give up nursing altogether in April 1985.

10. Taking all the evidence into account, and in particular the fact that when the claimant started part-time work, notwithstanding her ill-health, she did not intend to make it her normal occupation but was actively seeking other full-time work and that she had a two year history of continuous full-time work before that date, I have come to the conclusion that by the date of the adjudication officer's decision the part-time employment had not yet become the normal pattern of work for the claimant. She is accordingly not caught by regulation 7(1)(e) and the forward disallowance imposed by the adjudication officer lapses.

(Signed) J B Morcom  
Commissioner

Date: 15th July 1986