

**SOCIAL SECURITY ACTS 1975 TO 1986  
CLAIM FOR UNEMPLOYMENT BENEFIT  
DECISION OF THE SOCIAL SECURITY COMMISSIONER**

**Name:**

**Appeal Tribunal:**

**Case No:**

1. My decision is that the forward disallowance imposed by the adjudication officer in connection with his decision refusing to the claimant unemployment benefit for the inclusive period from 18 July to 14 August 1985 ceased to be effective with effect from 15 August 1985 because the grounds of the original decision of the disallowance under the original decision had by then ceased to exist.

2. This appeal has come up in what is to me an unusual way. The claimant gave up employment in employed earner's employment on 5 July 1985 in order to try to establish himself as a self-employed portrait drawer. He shortly thereafter claimed unemployment benefit. This was however disallowed by the adjudication officer not on the ground that he had voluntarily left his employment without just cause but on the ground that he was not available for employment. The original decision disallowing benefit was dated 13 August 1985 and disallowed benefit for the period from 18 July to 14 August 1985. There was annexed to it a so-called "forward disallowance" made under regulation 12(5) of the Social Security (Claims and Payments) Regulations 1979 [SI 1979 No. 628] in the following terms:

"If any further claim is made in respect of a day falling in the period 15.8.84 to 13.11.85 (both dates included) and on that day the grounds of this decision have not ceased to exist, this decision is to be treated as a disallowance of that claim Social Security (Claims & Payments) Regulations reg 12(5)."

The ground of the decision itself was that the claimant was not available to be employed in employed earner's employment on the days in question in term of section 17(1)(a)(i) of the Social Security Act 1975.

3. The claimant, though inclined to bridle at the disallowance of unemployment benefit to someone making a genuine attempt to create employment for himself, has now accepted that he was not available to be employed in employed earner's employment as opposed to self-employment during the period of the original disallowance. But as soon as he saw the terms of the forward disallowance he concluded that the situation could not be allowed to continue. And on 12 August he put his name to his answers to a questionnaire that included the question "You have made a declaration dated on 29/7/85 that you are prepared to accept full time work. Would you please state how you reconcile this with your reason for leaving [the previous employment] that you wanted to practise full time your portrait drawing" in the following terms "I was presented with the stark choice between Yes and No". He thus made it known to the job centre that he was holding himself out albeit reluctantly as available for work. He seems to have been treated as not really meaning it. If that were so his bluff could have been called by offering him employment, the refusal of which could

have subjected him to disqualification.

4. The consequence was that the forward disallowance was treated as still being operative though it was in the end treated as no longer operative from 30 October 1985. The claimant appealed against the original decision with forward disallowance annexed. It has now become an appeal against the decision to treat the grounds of the original disallowance as continuing to exist beyond the termination of the original decision. This is not quite the same thing as an appeal against the forward disallowance and leaves the further claims open for further decision (see Decision R(U) 1/86 at paragraph 13).

5. I thus have to decide whether the claimant was available for employment from 15 August, it not being contended (in particular in the claimant's application for leave to appeal) that he was available for the first six weeks after his employment ceased on 5 July 1985. From before 15 August the claimant was telling the job centre that he was available, but it seems to have been suggested that he was not available from 15 August on the basis of what was said in paragraph 14 of Decision 5/80. The relevant part of the paragraph reads as follows:

"Being available to be employed in employed earner's employment, in terms of section 17(1)(a)(i) of the [Social Security Act 1975], means being available in an active, positive sense, that is by making oneself available. Availability implies some active step by the person concerned to draw attention to his availability; it is not a passive state in which a person may be said to be available provided he is sought out and his location is ascertained. He must also be able to prepared to accept any office of suitable employment brought to his attention."

I am prepared to accept that down to the end of the six weeks from the claimant's ceasing employment he did not satisfy the last sentence of the foregoing; but his declaration of 12 August 1985 (unless is found not to be genuine in the sense that the claimant had no intention of acting in accordance with it) seems to me to satisfy that last sentence. As for the rest of the paragraph quoted it has to be remembered that it was written in the context of a claimant who had not made his availability known to the employment services by registering. It is possible to establish availability without registering, but in that case it is necessary to establish that one is in the market for employment (see decision R(U) 17/86 at paragraph 21). But a person who registers with the job centre and makes a declaration (not shown not to be genuine in the sense above indicated) that he will accept employment has in my judgment drawn attention to his availability and put himself into the employment market; he has peculiarly exposed himself to the risk of disqualification if he refuses employment put to him by the job centre. There is nothing in this case to suggest that the claimant's declaration was not genuine in the above sense. It must be taken to satisfy the test of availability (see decision R(U) 5/65 at paragraphs 5 and 6). In these circumstances there is no need for the claimant to demonstrate further active steps to obtain work.

6. In my judgment this claimant has established availability from 15 August 1987 and his appeal is to that extent allowed. This decision, if adopted by those concerned to award credits, may be of assistance to the claimant, but it will not lead to the payment to him of anything further by way of unemployment benefit (I say nothing about supplementary benefit) because he has subsequently exhausted his title to unemployment benefit and would have done so earlier if he had been awarded benefit from 15 August 1987. It follows that the unemployment benefit paid for the final days before he exhausted his title will fall to be treated under regulation 9(5) of the Social Security (General Benefit) Regulations 1982 [SI 1982 No. 1408] as paid on account of the benefit payable as the result of this decision.

7. Thus though the claimant's appeal succeeds it will not lead to the payment of any unemployment benefit.

-       **(Signed)**    J G Monroe  
                          **Commissioner**

**Date:**        18 August 1987