
Jurisdiction of insurance officer and local tribunal

The insurance officer decided that family allowances were payable for certain periods but were not payable for certain other periods. When the claimant appealed against this decision, and before any payment had resulted, the insurance officer discovered that he had made certain errors of law in the decision and that family allowances were not payable for certain of the periods for which he had made awards. In his submission to the local tribunal the insurance officer pointed out where he had erred in law in framing his decision. The local tribunal decided that his submission was correct and dismissed the claimant's appeal. The result of correctly applying the law was to entitle the claimant to £18 less by way of family allowances than the amount to which she would have been entitled in pursuance of the insurance officer's decision.

Held that it was open to the insurance officer to pursue the course that he did. It is well-settled that a hearing before the Commissioner is a rehearing of the whole case. It is open to the Commissioner to deal with any points, and any questions of law, that may be put before him, always provided that the claimant is given a proper opportunity of meeting any fresh point that may be raised. Logically the same must apply to a hearing before a local tribunal, but, again, always provided that the claimant is given a proper opportunity of meeting any fresh point that may be raised.

[Paragraphs 1 to 3 and 10 to 15 of the decision are not reproduced as they relate only to the particular case which has been decided.]

[Paragraphs 1 to 3 of the decision are not reproduced.]

4. On 4th March 1970 the local insurance officer adjudicated on the claimant's claim for family allowances which he made on the previous 30th January. The insurance officer gave a decision that a family allowance was payable to the claimant for certain periods but he also decided that the allowance was not payable to the claimant for certain other periods for reasons which were set out in his decision. The claimant appealed to the local tribunal from the insurance officer's decision. It then transpired that in giving his decision of 4th March 1970 the insurance officer had made certain errors of law. It transpired that, as a matter of law, the claimant was not entitled to family allowances for certain of the periods for which by the decision of 4th March it had been awarded to her. As I understand it, the errors of law were discovered before any payment had been made to the claimant in pursuance of the decision of 4th March 1970.

5. The insurance officer made a long submission to the local tribunal. He pointed out where he had erred in law in framing his decision of 4th March. He submitted to the local tribunal what, it was contended, the true effect of the relevant provisions of Family Allowances Act 1965, and of the regulations made thereunder, should be held to be in the light of the facts of the case. I will not go into details. It is unnecessary to do so. I say no more than that the result of correctly applying the law to the facts, as the insurance officer did in his submission, was to entitle the claimant to £18 less by way of family allowances than the amount to which it appeared she was entitled in pursuance of the erroneous application of the law to the facts as stated in the decision of 4th March 1970. The local tribunal, before whom the claimant did not attend, recorded: "We decided that in fact the insurance officer was correct." I assume that that referred to the insurance officer's submission and not to the decision of 4th March. The unanimous decision of the tribunal was "appeal dismissed".

6. The question I raised on the proceedings before the local tribunal, and with which Mr. Parke, a member of the solicitor's office of the Department of Health and Social Security, dealt at the adjourned hearing before me, was this. Was it open to the insurance officer on an appeal by the claimant to invite the local tribunal to give a decision less favourable to her than the decision from which the appeal was brought? Was the insurance officer not, in effect, seeking to appeal, or perhaps cross-appeal, to the local tribunal from his own decision? Should the insurance officer not, I asked, have reviewed his decision of 4th March 1970 on the ground that it was erroneous in point of law which is a ground for review under the Family Allowances Act 1965? See regulation 3 of the Family Allowances (Determination of Claims and Questions) (No. 2) Regulations 1967 [S.I. 1967 No. 1572]. In the alternative, should the insurance officer not have referred the matter for review by the local tribunal? He could have done so under section 72 of the National Insurance Act 1965 as applied by section 5(2) of the Family Allowances Act 1965.

7. Mr. Parke satisfied me, however, that the procedure adopted by the local insurance officer in order to correct the error of law in his decision of 4th March 1970 was a proper, and in the circumstances the right, procedure. He referred me to Decision R(U) 2/54 but I do not think that there is any real analogy between that decision and the circumstances with which I was faced in the present case.

8. In Decision R(U) 2/54 the learned Commissioner held that, where a person had been disqualified for receiving unemployment benefit under section 22(2)(a) of the National Insurance Act 1965 on the ground that he had voluntarily left his employment without just cause, it was open to the local tribunal to consider also whether he had lost his employment through misconduct. But both those grounds for disqualification for the receipt of unemployment benefit are contained in a single statutory provision. I do not think that the decision to which Mr. Parke referred is in any way a conclusive answer to the questions that I raised in this case.

9. Nevertheless, I am satisfied that it was open to the local insurance officer to pursue the course that he did. It is well-settled that a hearing before the Commissioner is a rehearing of the whole case. It is open to the Commissioner to deal with any points, and any questions of law, that may be put before him, always, of course, provided that the claimant is given a proper opportunity of meeting any fresh point that may be raised. Logically, I think the same must apply to a hearing before a local tribunal, but, again, always provided that the claimant is given a proper opportunity of meeting any fresh point that may be raised. In the present case the position was made perfectly clear by the submission of the insurance officer and the claimant could not be heard to say that she was taken by surprise. Accordingly I approach the decision of the present appeal on the footing that the local tribunal's decision upheld the "decision" of the local insurance officer as set out in his submission.

[Paragraphs 10 to 15 of the decision are not reproduced.]

(Signed) Desmond Neligan,
Commissioner.
