

RETIREMENT PENSION

Late notice of retirement—good cause for the delay when the claimant has delegated to another person the giving of notice or the making of a claim.

The claimant, a married woman, reached pensionable age on 15 10 79, but did not claim retirement pension until 23 3 83 giving notice that she had retired from her 60th birthday. An invitation to claim retirement pension issued on 19 6 79 followed by a reminder on 10 7 79 were handed by the claimant to her husband who then dealt with the claim throughout. He delayed sending the claim form to the local social security office until satisfied that his wife's contributions were sufficient to obtain a reduced rate pension (paragraph 19).

Held that:

1. a claimant cannot be treated as retired from a date earlier than 12 months before the date on which notice of retirement is given (Social Security Act 1975, section 27(4) and the Social Security (Claims and Payments) Regulations 1979, paragraph 4 of Schedule 2) (paragraph 1(2));
2. it is for the claimant and not her husband to show good cause for the delay in giving notice and claiming (paragraph 18);
3. it was initially reasonable on the facts for the claimant to delegate dealing with her claim but in doing nothing further for 3½ years to ensure the claim was made the claimant had not shown good cause for the delay (paragraph 19).

The Commissioner summarises the principles to be applied when considering "good cause" when the claimant has delegated the making of a claim or giving notice of retirement (paragraphs 16 and 17).

1. My decision is:

- (1) Retirement pension is not payable for any period before 23.12.82 because the claimant has not proved that there was good cause for the delay in giving notice of retirement for any period immediately before that date. (Social Security Act 1975, section 27(4) and the Social Security (Claims and Payments) Regulations 1979, Schedule 2, paragraph 4).
- (2) Retirement pension is not payable for any period before 22.3.82 because in no circumstances can the claimant be treated as having retired from a date earlier than 12 months before the date on which notice of retirement was given. (Social Security Act 1975, section 27(4) and the Social Security (Claims and Payments) Regulations 1979, Schedule 2, paragraph 4).

Representation

2. I directed an oral hearing of this appeal in order to give the claimant (who did not appear before the local tribunal) an opportunity of giving oral evidence. The claimant's husband, in response to this direction wrote that he wished to make it clear that his wife (the claimant) was quite willing to appear, but felt that since she had little remembrance of the origins of the case and no knowledge of the complexities of the situation following taking his counsel from inception, apart from verifying this position could hardly help the Commissioner in making his decision. In reply to this letter, it was explained that the wife would not be compelled to attend the oral hearing if she did not wish to do so but that the onus of proving that she had good cause rested on her and that the Commissioner considered it only right that the wife should be given the opportunity of giving oral evidence. The claimant did attend the oral hearing and gave evidence. She was represented by her husband who also gave evidence. The adjudication officer was represented.

Nature of the appeal

3. This is an appeal by the claimant, brought with my leave, against the dismissal by a local tribunal of her appeal against the decision of an insurance officer on 3 May 1983 in the terms set out in paragraph 1 above. The claimant accepts that she cannot be paid retirement pension, which she had claimed from the date when she attained the age of 60 (15 October 1979), for any period before 23 March 1982, because statute and the regulations provide that she cannot be treated as retired from a date earlier than 12 months before the date on which notice of retirement was given; and it is accepted that this date was 23 March 1983. But she contends, through her husband, that there was good cause for her delay in giving notice of retirement and that retirement pension is accordingly payable throughout the period 23 March 1982 to 22 December 1982.

4. The real issue in this appeal is whether the claimant, who delegated the task of claiming retirement pension on her behalf to her husband, can be held to have established good cause for the delay in giving notice of retirement.

The relevant statutory provisions

5. The effect of the Social Security Act 1975 and of the Social Security (Claims and Payments) Regulations 1979 so far as they relate to the present case is that a person cannot be entitled to a retirement pension until she has retired from regular employment and given notice of her retirement.

6. Section 27(4) of the Act provides: -

“(4) Subject to the following subsection, a person shall not be treated as having retired from regular employment unless he has complied with the prescribed requirements as to the giving of notice of the date of his retirement; and where the date of retirement specified in the notice falls before the date when the notice is given, the person shall not be treated as having so retired earlier than on the date of commencement of the prescribed period before the giving of the notice.”

Note: the following subsection has no relevance until the expiration of 5 years from attaining pensionable age (age 60 for a woman) and accordingly does not apply to this case.

7. Paragraph 4(3) of Schedule 2 to the Claims and Payments Regulations provides:

“(3) For the purposes of section 27(4) the prescribed period shall be the period of 3 months; but that period shall be extended to the commencement of any continuous period immediately preceding the said period of 3 months throughout which the person giving the notice proves that there was good cause for the delay in giving such notice, so however that the prescribed period shall in no case exceed 12 months.”

The facts

8. It is not in dispute that the claimant reached pensionable age (60) on 15 October 1979 and that she would have been entitled to retirement pension from that date had she given formal notice of retirement and claimed retirement pension within the prescribed time. The earliest document in which the date of retirement is specified is form BR1, which had been sent to the claimant on 19 June 1979 and was received back through the post on 28 March 1983. The insurance officer when he awarded the claimant her pension accepted that the date when this notice was given was 23 March 1983 and it was agreed before me that the period in issue and for which good cause has to be shown is from 23 March 1982.

9. The claimant told me in evidence, and I accept, that the form BR1 (the appropriate claim for her retirement pension) sent to her on 19 June 1979 was received by her in that month and that it was accompanied by leaflet NP32, November 1978 edition, which is entitled “Your retirement pension”. The claimant said that she could not make head nor tail of them. She glanced at the two documents and then handed them over to her husband to deal with. The reminder form BR410 (LPG) dated 10 July 1979 was also received by her and it arrived at some time in July. She glanced at this and then handed it to her husband to deal with. Her husband dealt with the claim throughout. The claimant signed the notice of retirement on form BR1 received by the Department on 28 March 1983 and referred to in paragraph 4 above.

10. The claimant’s husband told me that he read all of leaflet NP32 that appeared relevant, that he had gone through all the papers carefully and that he had also read the reminder on form BR410 (LPG).

Leaflet NP32, November 1978 edition, states, at paragraph 7 on page 5, under the heading

“How to claim your pension”:

“If you claim late you may lose some pension”.

Paragraph 67, under the heading “Advice and assistance” at page 28 says:

“If, after reading this leaflet, you are in doubt on any point, or if you have difficulty in filling in your claim form, the staff at your social security office will be glad to help you.”

11. The claimant’s husband told me in evidence that after reading paragraph 13 which sets out the two contribution conditions for receiving a basic pension, he knew that his wife satisfied the first contribution condition but was not sure that she satisfied the second contribution condition taking into account paragraph 17 which sets out the position where the second condition is not fully satisfied. The reason for his delay in claiming from July 1979 to 23 March 1983 was that he was investigating whether this second condition had been satisfied sufficiently to enable his wife to obtain a reduced rate pension. It was not until March 1983 that he had satisfied himself of this.

12. He explained that he had read the paragraph 7 which said that if one claimed late one might lose some pension but considered that he could not claim until he knew whether or not his wife had a quarter of the necessary contributions to satisfy the second contribution condition. He also agreed that he had read paragraph 67 but considered that this related only to the filling in of the form.

13. A photocopy of the original form BR410(LPG), sent by the Department of Health and Social Security London Pensions Group to the claimant on 10 July 1979 is in these terms.

“Dear Madam

I recently sent a retirement pension claim form for you to complete but apparently you have not yet sent it back.

I should emphasise that it is in your own interests to complete the form and send it in, even if you do not expect to retire yet.

If you need another form because the one I sent you has not reached you, or has been mislaid, or spoiled, please let me know.

If there is any further information you would like to have, or if you want any help filling up the form, I shall be glad to give it.

If you have already completed and sent in a claim form, please say when you did this and give the address of the office to which you sent it.

Yours faithfully.”

14. Neither the claimant nor her husband, answered this letter or got in touch with the Department in any way in connection with her pension claim until the following letter dated 22 March 1983 was sent to the London Pension Group:

“Dear Sirs,

Please find enclosed Claim form BR1 completed.

At the same time this form was sent to me 19/6/79 it did not appear that I was entitled to a pension on my own contributions.

Further information obtained, and a study of your document NP32 October 1982 issue indicates that I should have been entitled to a reduced pension.

This is based upon the fact that I started paying normal full contributions in August 1935 and met the first provision of 50 flat rate contributions at any time before 6/4/1975.

In addition since starting work I made over 11 years of such contributions meeting the second requirement of one quarter of the qualifying years for full basic pension.

In addition there have been graduated contributions made for which I have credits, and I have retired at reaching the age of 60 years.

Yours faithfully,

(Signature of claimant)”

15. The husband’s explanation of the failure to act on the letter of 10 July 1979 was that he was not able to make a claim at this stage because he was verifying whether the second contribution was satisfied in part, so as to enable a pension to be claimed and he was not really able to make a claim without knowing this. The offer to provide further information he felt related to matters of a more general nature than this.

Delegation and “good cause”.

16. The principles relating to “good cause” for delay in claiming can equally be applied to cases where there has been delay in giving notice of retirement: see decision R(P) 3/59, at paragraphs 9 and 10. It is, accordingly, usual for the adjudication officer to submit, in pension appeals

before the Commissioner, that should the Commissioner find that good cause has been shown for the delay in giving notice of retirement, he would not wish to dispute that it should also be accepted for the delay in claiming retirement pension, subject to the overriding statutory bar of 12 months [section 82(2)(c) of the Social Security Act 1975]. Such a submission has been made in the present appeal and I accept it.

17. (1) The obligation to claim benefit, or give notice of retirement, within the prescribed time is a personal obligation. A claimant cannot simply leave this to others and take no further interest in the matter. Where this happens, and the time limit is exceeded, good cause has not been shown: see Decision CG 207/49 (K.L.). This principle was approved by a Tribunal of Commissioners in R(G) 9/52.

(2) A claimant can delegate the obligation of claiming, if it is reasonable to do so: (See CG 1/50 (K.L.) followed in R(G) 17/52). In such a case, the claimant will have good cause notwithstanding that the delegate himself cannot show good cause for the late application: see Decisions CG 1/50 and CU 78/49 (K.L.) and R(S) 4/52.

(3) The test of whether it is reasonable to delegate the making of a claim was stated in CG 1/50 (K.L.) in the following terms: and applies equally to the giving of notice of retirement:

“In a case in which it was practicable for the beneficiary to make his claim for benefit himself but he has delegated the task of making it to another person who fails to make the claim in time, good cause for the failure can be shown by proving that having regard to all the circumstances, including the beneficiary’s education and experience of affairs, a reasonable person in the same position would not have thought it necessary to send the claim to the local Insurance Office himself but would have relied on the other person to send it in time and would have taken no steps beyond those (if any) which the beneficiary took to ensure that the other person had sent the claim in time
I desire to emphasise that a claimant can only prove good cause if he shows that he did all that he reasonably could to ensure that the claim was made in time. Every case of this kind must be judged in the light of the particular circumstances.”

(4) It may be reasonable to delegate in the first place. But a claimant who does so does not absolve himself of his obligations by delegating in this way. A claimant who does delegate *must* show that he has done all that he reasonably could to ensure that the claim was made in time by the delegate and if he has reason to suspect that the claim has not been made in time he must take the matter up: see Decisions CG 1/50 (K.L.), CU 78/49 (K.L.) and R(S) 25/52.

(5) Reported examples of delegation which illustrate these principles include the following:

(i) Putting claim in office out-tray for posting was held reasonable. The period during which it was not posted was so short that the claimant had no reason to suspect that it was not posted. (A claim is made when posted: Social Security Act 1975, section 79(6). See Decision R(S) 25/52. By contrast, a claimant for sickness benefit who did nothing for 2 months after her return from hospital and who did not ascertain from her husband that he had not, as she thought, dealt with her claim

on her behalf, was held not to have good cause for the delay: see Decision CG 207/49 (K.L.).

(ii) Entrusting a death grant claim to a solicitor: see Decision CG 1/50 (K.L.) and R(G) 17/52. This is reasonable because one is entitled to rely on solicitors to know and observe legal time limits which are part of their work: see R(G) 17/52. Contrast R(G) 9/52, where solicitor on facts not instructed.

(iii) Relying on a solicitor's advice that a person cannot claim sickness benefit while suing a bus company for damages. This has been held reasonable because solicitors are legally qualified to interpret Acts of Parliament: see Decision CS 50/50 (K.L.).

(iv) A young person allowing her mother to handle her claim. There is a special line of approach where the parents of a young person handle the claim and fail to claim in time and it is considered reasonable for a young person to allow a parent, when the claimant is sick, to take over the task of sending in the claim: see Decision R(S) 4/52.

(v) A member of an Association, in accordance with a recognised practice, allowing the Secretary to lodge the claim. If such claims are lodged out of time, the members have good cause, but not the Secretary as regards his own claim: see Decision CU 78/49 (K.L.).

(vi) In some emergencies, it may be reasonable to delegate the making of a claim to a friend or relative: see Decision CWG 6/50 (K.L.).

(6) Cases where an appointment has been made under the Regulations because the claimant is not competent to act, fall into a special category. The acts of the person appointed are treated as those of the claimant and the question is then whether the *appointee* had good cause for any late claim. The appointee stands in the shoes of the claimant for this purpose: see Decision CWG 6/50; and for a recent decision in the field of supplementary benefit R(SB) 17/83. This principle has also been applied in the case of a nun who had withdrawn from the world, where the Prioress made an out of time claim on her behalf: see Decision R(S) 2/51.

Conclusion

18. It is quite clear that the claimant delegated the making of her claim for pension and the giving of notice of retirement to her husband. Applying the principles set out above, it was for her to show good cause and not the husband. If she chose to delegate, and it was reasonable in the circumstances for her to do so, she still remained responsible to take all steps that she reasonably could to ensure that the claim was made and notice was given in time. She could not simply leave it to him and take no further interest in the matter.

19. After seeing and hearing the claimant and her husband, I am satisfied that in the circumstances of this case it was, in the first instance, reasonable to hand the claim form over to her husband and ask him to deal with it. The claimant's husband who is himself retired, is a forceful and articulate man and it is clear that the claimant relied upon, or at least allowed him to deal with, business matters of this type on her behalf. But it is quite impossible to accept that the claimant did all that she reasonably could to ensure the claim was made in time. She had received the claim form in June 1979. The Department reminded her in July 1979 that she should complete this form whether she wished to retire or not. She was thus on notice of the

need to complete the form. But all that she did was to glance at this and hand it to her husband. She did nothing else until March 1983, more than 3½ years later. In these circumstances it is quite impossible to hold that the claimant had done all that she reasonably could to ensure that the claim was made in time. Good cause for the delay in giving notice of retirement has accordingly not been shown and the appeal must fail.

20. The claimant's husband argued, before me, that he had good cause for the delay in claiming. That is not the question that I have to decide, which is whether the *claimant* has good cause for the delay in claiming. If it is relevant (contrary to the view that I take) I am quite clear and I hold that the husband did not have good cause for the delay in giving notice of his wife's retirement. Leaflet NP32 (November 1978 edition) which he had read stated in terms that if you claim late you may lose some pension. He ignored this clear statement. He also disregarded the invitation to obtain advice and assistance from the local social security office if in doubt on any point. He was clearly in doubt about the second contribution condition because, according to his own account, he took some 3½ years to arrive at the conclusion that it was satisfied sufficiently to obtain a reduced pension. He could have found the answer in much less time by consulting the local office, as recommended in form NP32. One month after the receipt of form BR1, a reminder to complete it was sent, but the husband nevertheless delayed for a further 3½ years, meanwhile making no enquiries, whether by letter, telephone or visit, of any of the offices in the Department of Health and Social Security. I find this quite unreasonable. The husband did not have good cause for the delay at any time after the receipt of the reminder in July 1979.

21. The appeal accordingly fails. My decision is set out in paragraph 1.

(Signed) V. G. H. Hallett
Commissioner
