

## SUPPLEMENTARY BENEFIT

### Normal requirements: modification following suspension of unemployment benefit

The claimant was unemployed and claimed supplementary allowance when payment of unemployment benefit had been suspended. The supplementary benefit officer formed the opinion in accordance with regulation 8(1)(b) of the Supplementary Benefit (Requirements) Regulations 1980, that a question as to disqualification for unemployment benefit had arisen and awarded supplementary allowance at a rate which represented a 40% reduction of the claimant's normal requirements. On appeal, the Tribunal awarded the claimant his full entitlement, a majority having concluded that a question as to disqualification did not arise. The supplementary benefit officer appealed to a Social Security Commissioner.

*Held that:—*

1. The claim for unemployment benefit for the relevant period had not been determined and a question as to the disqualification of the claimant for receiving it had clearly arisen;
2. Such question is for determination by an insurance officer and an Appeal Tribunal has no power to predict or pre-empt his decision;
3. In a case falling under regulation 8(1)(c) of the Requirements Regulations, the supplementary benefit officer or Appeal Tribunal must refer the issue of disqualification to the insurance officer. Pending his decision, the supplementary benefit officer or the Appeal Tribunal must determine the claimant's entitlement to supplementary benefit on the assumption that the decision on the question referred will be adverse to him.

The appeal by the supplementary benefit officer was allowed.

1. This is a supplementary benefit officer's appeal brought, by my leave, against a majority decision of the supplementary benefit appeal tribunal ("the tribunal") dated 30 March 1981 which reversed a decision of the benefit officer issued on 2 March 1981.

2. At the material time the claimant, then aged 17, lived with his parents. Until 15 January 1981 he was working for a firm of roofers. On that day he left that job. Thereafter he was unemployed. On 16 January 1981 he claimed a supplementary allowance. This was awarded and paid to him from his pay-day on 17 January until 6 February 1981, when it was stopped because unemployment benefit became payable to the claimant and the rate of that benefit exceeded the aforesaid supplementary allowance.

3. Thereafter payment of unemployment benefit was suspended in respect of the 6 weeks period 13 February to 26 March 1981. On 24 February 1981 the claimant again claimed a supplementary allowance. On the relevant form B1 the local unemployment benefit office wrote "Left voluntarily" as the reason for the suspension of unemployment benefit. This was, of course, a clear reference to section 20(1)(a) of the Social Security Act 1975, which lays upon insurance officers and the other statutory authorities a duty to disqualify for receiving unemployment benefit, for a period not exceeding 6 weeks, a person who has voluntarily left his employment without good cause. At this stage there had not, of course, been any actual disqualification—only suspension of unemployment benefit. The overwhelming inference is that the insurance officer was investigating the circumstances, pending a final decision one way or the other.

4. A supplementary allowance was awarded and paid to the claimant as from the pay-day 28 February. Down to, and including, the pay-day 28

March it was paid at a rate which reflected a 40% reduction of the normal requirements element in the allowance. The benefit officer made this reduction pursuant to regulation 8 of the Supplementary Benefit (Requirements) Regulations 1980 [S.I. 1980 No. 1299], as amended.

5. Regulation 8, so far as material to this appeal, provides as follows:

- “(1) This regulation applies to a claimant . . . whose right to an allowance is, pursuant to section 5 [i.e. of the Supplementary Benefits Act 1976], subject to the condition of registration and availability for work, and who—
- (a) is disqualified for receiving unemployment benefit under section 20(1) of the Social Security Act (disqualification by reference to conduct resulting in unemployment or conducing to its continuance); or
  - (b) has made a claim for unemployment benefit which has not been determined by an insurance officer appointed under section 97(1) of that Act, but in respect of which, in the opinion of the benefit officer, a question as to disqualification under the said section 20(1) arises; or
  - (c) either—
    - (i) has not made a claim for unemployment benefit, or
    - (ii) has had such a claim disallowed other than by reason of disqualification under the said section 20(1),but who would be so disqualified if he were to make such a claim or if it had not been so disallowed.
- (2) Subject to paragraph (3) [which does not bite upon this case], in relation to a claimant to whom this regulation applies, the table, regulation 9 and paragraphs 1 and 2 of Schedule 1 shall be modified so that the weekly amount specified for his normal requirements shall be reduced—
- (a) in relation to an amount specified in the table, by 40 per cent. of the amount for the time being specified in paragraph 4 of the table;
  - (b) in relation to an amount specified in paragraph 1 or 2 of Schedule 1, by 40 per cent. of the ordinary rate for the time being specified in the relevant paragraph;
  - (c) in relation to an amount for the time being specified in sub-paragraph (a) or (b) of paragraph (8) of regulation 9, by 40 per cent., the reduction being rounded, in any case where it is not a multiple of 5p, to the nearest such multiple or, if it is a multiple of 2.5p but not of 5p, to the next lower multiple of 5p.
- (3) . . . .
- (4) The period for which this regulation shall apply shall be—
- (a) in a case to which sub-paragraph (a) of paragraph (1) applies, the period of the disqualification;
  - (b) in a case to which sub-paragraph (b) of paragraph (1) applies, a period not exceeding 6 weeks but so that where on subsequent determination of a claim for unemployment benefit in respect of which that conduct is in question—
    - (i) disqualification is not imposed, any reduction made under paragraph (2) shall be withdrawn,

- (ii) if disqualification is imposed, the period of such reduction shall, if different, be adjusted to correspond with the period of disqualification;
- (c) in a case to which sub-paragraph (c) of paragraph (1) applies, the period for which the claimant would be disqualified.”

6. I have cited at some length from regulation 8 because little more than that need be done in order to dispose of this appeal. The claim for unemployment benefit for the relevant period had not been determined and a question as to the disqualification of the claimant for receiving that benefit had quite clearly arisen; and no reasonable benefit officer could have formed an opinion to the contrary. The case fell squarely within regulation 8(1)(b). The reasons for the decision reached by the majority of the tribunal were set out thus on form LT 235:

“Majority of tribunal were of the opinion that a question did not arise as to disqualification and that the appellant would be entitled to unemployment benefit.”

I am at a loss to understand the basis of this opinion. It flew in the face of the evidence. I can only think that the majority entered upon a consideration of the merits of the disqualification issue (which were canvassed at some length in the claimant’s notice of appeal to the tribunal). If they so did, they were misconceiving their position. Manifestly the insurance officer was seized of the “question”. It was no part of the tribunal’s function to predict or pre-empt his decision. Neither the benefit officer nor the appeal tribunal is ever empowered to determine issues of disqualification (pursuant to section 20(1) of the 1975 Act) for unemployment benefit. If the case falls under regulation 8(1)(c), the benefit officer or the appeal tribunal must, “forthwith”, refer the issue of disqualification to the insurance officer; and pending the insurance officer’s decision the benefit officer or the appeal tribunal must proceed to determine the supplementary benefit entitlement of the claimant on the assumption that the decision on the question referred will be adverse to him. When the insurance officer has made his decision, the decision of the benefit officer or appeal tribunal can, of course, be reviewed. (See regulation 5 of the Supplementary Benefit (Determination of Questions) Regulations 1980 [S.I. 1980 No. 1643].)

7. The dissenting member of the tribunal reached the right conclusion for the right reason.

8. Rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [S.I. 1980 No. 1605] leaves me no alternative but to refer this case to a differently constituted tribunal. Since the material facts are not in dispute, however, and since only one conclusion in law can be reached upon those facts, the function of that fresh tribunal will merely be to disallow the claimant’s appeal thereto.

9. My decision is as follows:

- (1) The decision of the tribunal dated 30 March 1981 is erroneous in law and is set aside.
- (2) The case is referred to a differently constituted tribunal.
- (3) I direct that that tribunal disallow the claimant’s appeal lodged on 10 March 1981 without hearing further evidence or entertaining further submissions.

(Signed) J. Mitchell  
Commissioner