

**UNEMPLOYMENT BENEFIT**

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**Adjudication—application for review of Commissioner's refusal to extend the time for appealing against a decision of a local tribunal**

The claimant applied to the Commissioner for an extension of time for the bringing of appeals against two decisions of a local tribunal. The Commissioner dismissed both applications. The claimant then applied for a review of the Commissioner's "decision." The local insurance officer accepted the application as a valid application for review of the "decisions" which refused to extend the time, but he refused to review them. The local tribunal then purported to allow appeals against the refusal to review.

*Held* that the local insurance officer and local tribunal had no jurisdiction to entertain the application for review, and that their purported decisions were nullities. A refusal by the Commissioner to extend the time for appealing under regulation 15(2) of the National Insurance (Determination of Claims and Questions) Regulations is not a "decision" for the purpose of the review procedure under regulation 18 of those regulations. The Commissioner also declines to treat the application for review as a further application for an extension of time for appealing against the original decisions of the local tribunal.

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1. I declare that what purport to be the decisions of the local tribunal dated the 3rd February 1964 are nullities.
2. This matter comes before me by way of an appeal by the insurance officer from two purported decisions by the local tribunal. It arises in this way. On the 8th October 1962 a local tribunal decided that the claimant was disqualified for receiving unemployment benefit for six weeks under section 13(2)(a) of the National Insurance Act, 1946 on the ground that he had lost his employment through misconduct, and on the same date the tribunal also decided that for a part of the period he was in any case disentitled to benefit on the ground that he had not shown good cause for making a late claim.
3. The claimant appealed to the Commissioner against both those decisions but his appeals were not brought within the period of three months

prescribed by regulation 15(2) of the National Insurance (Determination of Claims and Questions) Regulations, 1948 [S.I. 1948 No. 1144]. In each case the claimant applied for an extension of time for the bringing of his appeal and stated his reasons for delay in the following terms : " That I wrote to the Chief Insurance Officer of the Ministry of Labour stating my case and he has now referred my case to you "

4. Those applications came before me in August 1963 and the question that I had to consider was whether there were special reasons for allowing the appeals to be brought out of time. If there were such special reasons it would have been open to me, in the exercise of my discretion, to extend the time for the bringing of the appeals but if there were no special reasons for extending the time for appealing the appeals could not be entertained. See regulation 15(2) of the regulations referred to above. Having fully considered the matter I came to the conclusion that there were no special reasons for granting an extension of time and that I could not entertain the appeals. On the 9th August 1963 I therefore dismissed both applications and the claimant was duly notified of my reasons for doing so.

5. On the 16th October 1963 the claimant completed form L.T. 54 which, presumably, he obtained from the local employment exchange. That form is headed " Application for a review of a decision " and, so far as relevant, it reads as follows : " To the Insurance Officer—I hereby apply for review of the decision of the Commissioner on the claim for unemployment benefit in respect of the period commencing on 9.11.61 ". The form was signed by the claimant who set out his reasons for applying for a review at length on separate sheets of paper.

6. Notwithstanding there was no decision of the Commissioner on the claimant's claim for unemployment benefit in respect of the period commencing on the 9th November 1961 the local insurance officer accepted form L.T. 54 as being a valid application for review under regulation 18(1) of the regulations referred to above of both my " decisions " refusing to extend the time for appealing and purported to deal with it under regulation 18(1) of the regulations. On the 30th October 1963 he gave what purported to be two decisions in identical terms as follows :—

" I refuse to review the decision on the following grounds :—

I am not satisfied that the decision was given in ignorance of, or was based on a mistake as to, some material fact ; there has not been any relevant change of circumstances since the decision was given ; and the decision was not based on the decision of any question determined by the Minister or of any other question which has been revised under the Family Allowances (Determination of Claims and Questions) Regulations "

7. The claimant then appealed to the local tribunal who purported to allow the appeals against both the insurance officer's so-called decisions. The local tribunal clearly went into the matter very fully and, indeed, their unanimous decision begins with the following words : " This is a difficult case. We have severally read all the papers which are voluminous and we have spent an afternoon on this case ". They then set out in numbered paragraphs the various matters they had considered and they concluded their decision (in both cases) by saying, in paragraphs 12, 13 and 14 :—

" 12. We think that regulation 18 is mandatory and that ' may ' there means ' must '—if the local tribunal is satisfied that the decision was given in ignorance of a material fact.

13. We think, therefore, that we are bound to allow the appeals from local insurance officers' refusals to review the decisions of the Commissioner and that the papers should go back to the Commissioner for him to consider whether, in the light of the new facts, he considers that there are special reasons for the time of appeal to be extended.

14. It is not for us to express any opinion upon the meaning of 'special reasons' and whether merits are also to be considered".

8. The insurance officer now concerned submits rightly, in my opinion, that neither the local insurance officer, nor the local tribunal, had jurisdiction to entertain the application for a review and adds (see paragraph 7 of her submission) that she has been unable to find any decision of the Commissioner bearing on that question. I do not find that surprising for I do not suppose it has ever arisen before and it should not, if I may say so, have arisen now. However, in deference to the local tribunal, who evidently gave much thought to the matter, I will endeavour to explain why their purported decisions cannot stand.

9. The National Insurance (Determination of Claims and Questions) Regulations, 1948, as amended, are made under the authority of sections 43 and 47 of the National Insurance Act, 1946 by which it is provided, *inter alia*, that regulations shall provide for enabling appeals to be brought from a local tribunal to the Commissioner or deputy Commissioner (see section 43(3)(c)) and effect is given to that provision by regulation 15 of the regulations. Paragraph (1) of that regulation, so far as is material, reads as follows: "Subject as hereinafter provided, an appeal shall lie to the Commissioner from any decision of a local tribunal at the instance of" the claimant, and by paragraph (2) of the regulation an appeal to the Commissioner must be brought within three months from the date of the decision of the local tribunal "or such further period as the Commissioner may in any case for special reasons allow".

10. It follows therefore that an appeal cannot lie to the Commissioner from a decision of a local tribunal unless it is brought within the specified period of three months, or unless the Commissioner allows an extension of that period. But a refusal to extend the time is not a "decision" for the purposes of the review procedure under regulation 18; it is merely the exercise of a personal discretion vested in the Commissioner by regulation 15(2). The provisions of regulation 18 relating to the review of any decision under Part IV of the regulations cannot therefore come into play at all for there is nothing that can be reviewed.

11. Accordingly, in purporting to review my refusal to grant an extension of time for appealing against the local tribunal's decisions of the 8th October 1962 the local tribunal on the 3rd February 1964 fell into error for they had no jurisdiction to consider the matter.

12. It is true that when refusing to extend the time for the bringing of the appeals I said that "My decision" is that the time for appealing to the Commissioner could not be extended, which may perhaps have been somewhat misleading, but it is clear that neither the local insurance officer, nor the local tribunal, had any power to entertain the claimant's application for a review and that the whole of the proceedings following that application were misconceived. The purported decisions of the local tribunal on the 3rd February 1964 (and the purported decisions of the local insurance officer of the 30th October 1963) were therefore nullities and must be set aside.

13. That would be enough to dispose of the matter but I ought, I think, to refer to a further submission of the insurance officer now concerned (which is clearly made in a laudable attempt to assist the claimant) namely, that the claimant's request for a review could be treated as a further application for an extension of time for appealing against the local tribunal's decision of the 8th October 1962. I desire to reserve my opinion as to whether it is open to a claimant to make repeated applications under regulation 15(2) for an extension of time and it will be sufficient to say that in this case I am not prepared to treat the application for a review in the way suggested.

14. I should add that the claimant requested that the present appeal by the insurance officer should be heard at an oral hearing but, after considering the record of the case, I was satisfied that the appeal could properly be determined without a hearing and the claimant was duly notified that his request for an oral hearing had been refused.

15. For the reasons given above the insurance officer's appeal succeeds.

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