

R(U) 2/92

Mr. M. J. Goodman
29.9.88

CU/215/1987

Claim – failing to claim while looking for work – whether claimant able to show “good cause” for delay in claiming

The claimant was employed as a salesman until that employment ended on 12 December 1986. He did not attend the local office of the employment service until 23 December 1986. On 20 January 1987 he made a late claim for the period 13 to 22 December 1986. The adjudication officer decided that the claimant had not shown good cause for this late claim. The claimant appealed to a tribunal who upheld the adjudication officer’s decision.

The claimant appealed to the Commissioner.

Held that:

1. the tribunal’s findings of fact and reasons for decision were too brief and did not comply with regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986 (para. 6);
2. a claimant who considers that his first priority is to try and find other work is not necessarily to be taken as deliberately electing not to claim benefit so as to fail to show good cause for the delay in his claim. An adjudicating authority considering a case where a late claim is made should carefully consider all the facts of the case to establish whether there is good cause for the delay (para. 7);
3. R(U) 34/51 is distinguishable as a case where, on the facts, it was clear that there was a deliberate election not to claim benefit (para. 7).

The appeal was allowed.

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I allow the claimant’s appeal against the decision of the social security appeal tribunal dated 13 July 1987 as that decision is erroneous in law and is set aside. I remit the case for rehearing and redetermination, in accordance with the directions in this decision, to a differently constituted social security appeal tribunal: Social Security Act 1975, section 101 as amended by paragraph 7 of Schedule 5 to the Social Security Act 1986.

2. This is an appeal to the Commissioner by the claimant, a man who had been employed as a salesman from 6 October 1986 to 12 December 1986 when his employment terminated. He did not attend the local unemployment benefit office to claim unemployment benefit until 23 December 1986. He has stated that on that day he was not informed by the officials in the local unemployment benefit office of the possibility that he could make a delayed claim for unemployment benefit for the previous period i.e. from 13 December 1986 until 22 December 1986. However, in circumstances which are not entirely clear, the claimant was issued with a delayed claim form (UB591) on 9 January 1987 on which he did then claim retrospectively for the period from 13 December 1986 to 22 December 1986 giving as his reason for not claiming earlier:

“I was looking for work and not knowing the procedures I didn’t register as unemployed. This is the first time in this situation since leaving school some 27 years ago and I have not received any instructions on the correct procedures.”

3. By a decision issued on 17 February 1987 the local adjudication officer held that the claimant was not entitled to unemployment benefit for the period from 13 December 1986 to 22 December 1986 because his claim for that period made on 20 January 1987 (the date that the claimant actually completed form UB591 which was issued to him on 9 January 1987 some eleven days previously) was not made within the time limit prescribed by regulations (i.e. the Social Security (Claims and Payments) Regulations 1979, regulation 14 and Schedule 1) and the claimant had not proved that there was “good cause” for the delay in making the claim.

4. On his appeal from that decision to the social security appeal tribunal, the claimant gave detailed and comprehensive written reasons why he considered the adjudication officer’s decision was incorrect and the local adjudication officer himself made a detailed submission to the social security appeal tribunal.

5. Unfortunately the claimant was not able to attend the hearing before the social security appeal tribunal because of his working commitments and it is clear that he was prepared to allow the tribunal to proceed in his absence. This of course put the tribunal under a disadvantage in that it was not able to hear evidence from the claimant and I would suggest to the claimant that he should make every effort to attend the re-hearing before the new tribunal that I have now directed. It is difficult for a tribunal to arrive at a comprehensive conclusion in cases of this kind if the claimant is not there to give his version to the tribunal.

6. The adjudication officer now concerned, in a written submission dated 16 February 1988, submits that the original tribunal in this case was in breach of the duty imposed by regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986 to include in its record of decision (on form AT3) a statement of the reasons for the decision and of the tribunal’s findings on question of fact material to that decision (citing R(U) 3/80 and R(S) 2/83). Undoubtedly that submission is correct in the present case. The tribunal’s findings of fact and reasons for decision were very short and did not comply with regulation 25(2)(b) of the Adjudication Regulations 1986. Their only reasons for decision were “Claimant did not make enquiries. Claimant deliberately refrained from claiming while seeking work.” I appreciate the difficulty that the tribunal had in the absence of the claimant but I am afraid that those reasons are not adequate. A number of substantial contentions were put by the claimant to the tribunal and they should have been dealt with in the tribunal’s reasons for decision.

7. Reliance has been placed in this case on an early reported Commissioner’s decision, R(U) 34/51, which is said to decide that a deliberate election not to claim benefit is not acceptable as good cause for delay in claiming. No doubt that may be so in a clear case (which on its special facts R(U) 34/51 was) but I have some doubt whether it could truly be said to be applicable to the facts of the present case, where it may well be that there was not a deliberate election not to claim benefit but that the claimant thought that his first priority was to try to find other work and only when it became clear that that would not immediately happen did he make his claim for unemployment benefit. It may be that in the present day and age the man on the Clapham omnibus (the traditional judicial personification of the reasonable man)

would tend to follow a similar course. In my view in modern circumstances careful investigation should be made in such a case and a late claim should not be dismissed out of hand by reliance on R(U) 34/51, which was decided on its own special facts and is a very shortly worded decision. I will say no more than that and leave the matter to the sense of the new tribunal to arrive at its decision on **all** the facts. I reiterate that it is most desirable that matters should be so arranged that the claimant has the opportunity of attending the new tribunal's hearing.

Date: 29 September 1988

(signed) Mr. M. J. Goodman
Commissioner