

How to Challenge an Actively Seeking Work Sanction (JSA)

If you have had your benefit stopped/ sanctioned for allegedly failing to actively seek work, it is vital that you challenge the decision.

A typical explanation from the DWP Decision Maker:

"The decision maker took the decision that the claimant has failed to demonstrate to the employment officer that he has taken all reasonable steps agreed in their Jsag dated X that offer the best prospects of obtaining employment. The decision was based on the information provided by X on the DART referral dated X and form ES4 covering the period X to X."

1. After receiving a decision notice for the DWP Decision Maker, you must appeal within one month from the date on the decision notice.
2. Send your appeal by recorded delivery to the address on the decision letter or ask Jobcentre Plus to scan and send directly to the Decision Maker.
3. After 7 days check that the appeal has been received and keep checking every 2 weeks on progress; appeals do get lost.

Completing the appeal

You need to complete the sections in red. The sections in **blue** are to help and guide you and must be removed.

The appeal template below will help you to present your case. However, if **you are not 100% certain about what to write in the **red sections****, please seek help from here or via a local welfare agency.

It is so simple to make a mistake, which may lead to another sanction around your availability for work being applied or your appeal failing.

It is important that your Jobseeker Agreement/JSA Claimant Commitment is revised following your appeal being upheld. Please seek advice here or with a local welfare agency.

N.B. Please be aware that welfare rights law and guidance change frequently.

Appeal Process:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/344444/s-reform-summary.pdf

Only to be used if you need to escalate to a Tribunal

www.rcpsych.ac.uk/pdf/HOW%20TO%20APPEAL%20DWP.pdf

The Appeal Submission Document

ASE Mandatory reconsideration submission - JSA regulations. or Tribunal Appeal

Date

Appellant

Your name:

Address:

National Insurance No:

Respondent

Secretary of State

1. This is a request for a **reconsideration/appeal** against the decision made by the Secretary of State on [date] that I was not entitled to JSA for the period [date] to [date] inclusive; because I was not deemed to be actively seeking work.

2. Consideration of individual circumstances to determine reasonable prospects

I ask the Decision Maker to take into account my full circumstances, which Jobcentre Plus are duty bound to consider in terms of S7 of the Act. S7(1):

This section is vitally important; state your circumstances here, for example:

[I have been unemployed for X years, I am reliant on public transport and the local labour Market is poor (DMG 21634).

Any relevant health issues/other circumstances that impact on your ability to seek work]

TAKE ADVICE IF YOU ARE UNSURE

I ask the Decision Maker to make every possible effort to try to ascertain the full extent of my situation at the relevant times in relation to my Jobseeker's Agreement and the requirement to actively seek employment.

Claimants never get to see what Jobcentre staff have submitted to the DWP Decision Maker. To ensure natural justice takes place you must be given the opportunity to present your evidence and to sign the document. You can take advice before handing your statement back to the Jobcentre staff. This may prevent an appeal taking place.

If relevant add here:

[I was not invited by the Jobcentre adviser to provide a statement, which is a breach in DWP procedure.

"Take a statement from the claimant, using the relevant stencil from DART. Ensure the claimant's reasons are fully covered." FOI 4960.]

3. The legislation & case law

The duty to actively seek work is not in any case to be found in the job seekers agreement but in S7 of the Act. S7(1) provides:

"a person is actively seeking work if he takes in that week such steps as he could reasonably be expected to have to take in order to have the best prospects of securing employment."

4. More detail is set out in regulation 18 of the Regulations. Regulation 18(1) provides that:

"... a person shall be expected to have to take more than two steps in any week unless taking one or two steps is all that is reasonable for that person to do in that week."

Reference: para 10 & 11 CJSA/1814/2007

<http://www.ossccsc.gov.uk/Aspx/view.aspx?id=2249>

Or here:

http://www.bailii.org/uk/cases/UKSSCSC/2007/CJSA_1814_2007.html

Para 9:

What steps must be taken?

The first error made by both the adviser and the tribunal is that they applied a negative test, not a positive test. The law imposes a test that asks what the claimant did. They looked at what C did not do, not what he did do.

Para 13:

“Further, there is nothing in the Act or the Regulations requiring that a claimant must comply with everything in the Agreement. The reverse is the case. The agreement must comply with the law. To be valid, a jobseeker’s agreement must comply “with the prescribed regulations in force”: section 9(1) of the Act. The pattern of the legislation is that a jobseeker’s agreement must comply with the test of actively seeking work in sections 1(2)(c) and 7 of the Act and regulation 18 of the Regulations and not the other way round.”

Para 14:

“That is illustrated by this appeal. C was required by his Agreement to take 6 steps each week and several other steps from time to time. That is clearly more steps than the regulation requires of him to meet the test of “actively seeking work”. And it is more steps than the Agreement asked him to record. On the facts, the secretary of state’s representative now accepts that C took four steps in the week and that those four steps met the test in section 7(1).”

Para 15:

The questions to be asked where it is alleged that someone is not actively seeking work are those following from section 7(1) and regulation 18(1), not from the agreement. They pose three questions, to be answered by the claimant’s actions that week:

(a) Should the claimant be expected to take at least three jobsearch steps that week, or is it reasonable that only one or two be taken?

(b) What steps were taken?

(c) In the light of that reasonable expectation and those findings, were the steps taken by the claimant “such steps as he can reasonably be expected to have to take in order to have the best prospects of securing employment” (section 7(1))?

If the steps by the claimant taken meet that test, it is irrelevant that the claimant did not also take some other step, whether or not it is in the jobseeker's agreement.

5. Consideration of what I did to seek employment:

Adapt to your case:

[See UJM print out (att.)/other job search record/document

[date] – [date] (benefit week)

X jobs applied for that gave me the best prospect of securing employment

At least X internet searches

Etc.

Total X+ steps

[date] – [date] (benefit week)

X jobs applied for that gave me the best prospect of securing employment

At least X internet searches

Etc.

Total X+ steps

In addition, I receive e-mails via various agencies, recruitment sites and I review them on a X basis.

I visit the 2 newspapers listed on my agreement, but these are a poor source of job leads.

Please note: I have only recorded jobs I applied for.]

My Jobseekers Agreement/JSA Claimant Commitment (see att.) states:

[Check my Universal Jobmatch daily for jobs X times a week = X

Ask friends & family as and when

Check the X and X weekly = X

Total no. of steps = X]

5.1 On the balance of probabilities it is reasonable to assume each job search does not always result in finding a suitable job to apply for, on this basis I must have exceeded the steps recorded on the agreement.

The JSA regulations state that most Jobseekers are required to take at least 2 steps per week to satisfy the reasonable test of actively seeking work (Regulation 18(1)). I have significantly exceeded this requirement in each week.

6. Determination of reasonable prospects

It is impossible for Jobcentre advisers to accurately determine the best and most reasonable steps as per S7 of the Act. S7(1) for each Jobseeker as they cannot be competent in every occupational area (there are more than 2000) or the labour market for each industry and location. There are limited opportunities in the travel to work area (see att.).

7. Consideration of mitigating factors, errors in law and in fact

For all the aforementioned reasons I cannot comprehend the Jobcentre's decision apply a sanction on the basis that I failed to take all the steps within the agreement.

Legal professionals will know that the Jobseeker's Agreement is not a contract, but a fluid plan of suggested activities, which can change for a variety of reasons from week to week. For example, due to the prevailing labour market conditions, personal circumstances, technology issues, religious and bank holidays etc. This is verified within DWP's Decision Makers' Guide. Further, Commissioner Williams describes the requirements of law in regards to the actively seeking employment regulations accurately and succinctly. Case law must be applied by the Tribunal judge as well as the DWP Decision Maker.

8. Absence of evidence by DWP

Jobcentre Plus has not been able to provide any information or evidence to support the following:

- a) The steps I took were unreasonable for my circumstances.
- b) I must comply with all the steps within the Jobseeker's Agreement (the duty to seek work is a weekly test and not a daily one and there is no requirement to seek work [**X hours per day/week**]).
- c) I have not applied for a reasonable number of jobs that gave me the best prospect of securing employment work each week.
- d) I failed to take at least 2 steps per week to look for work.

9. Conclusion

I submit for these reasons and the circumstances that prevailed at the time, I did all that could reasonably be expected of me in terms of S7 of the Act or Regulation 18 and therefore that JSA remains payable during the period in question and so I ask the [**Decision Maker/Tribunal**] to revise the decision.

Attachments

Jobseeker Agreement/cc Claimant Commitment

Job search diary/evidence

Recent Tribunal Decision outcome

Signed



FIRST-TIER TRIBUNAL

SOCIAL ENTITLEMENT CHAMBER

Held at: [REDACTED]

Appellant: [REDACTED]

Trill [REDACTED]

Respondent: Secretary of State for Work and Pensions

DECISION NOTICE

1. The appeal is allowed.
2. The decision made on 19th September 2013 is set aside. The tribunal was satisfied that between 4th and 17th September 2013 the appellant was actively seeking work in terms of section 7 of the Jobseeker's Act 1995 and that he took significantly more than two steps in order to have the best prospects of seeking work (Reg 18 JSA Regs 1995) No sanction is appropriate.
3. The tribunal was satisfied in terms of Rule 27 Procedure Rules 2008 that it was appropriate to make the decision without a hearing.

✧ The Tribunal reached a different conclusion on substantially the same facts. ✧