

*RCA - Given up A Particular Job Do not  
Necessitate Given up Regular Employment*

RAS/1/LM

Commissioner's File: CI/291/94

SOCIAL SECURITY ACTS 1975 TO 1990  
SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR REDUCED EARNINGS ALLOWANCE

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Thomas W C Watkins

Appeal Tribunal: Central London

Case No: 7/07/93/90030

[ORAL HEARING]

1. This is an appeal by the claimant against the decision of the Central London social security appeal tribunal dated 14 February 1994 confirming the decision of an adjudication officer that the claimant was no longer entitled to a reduced earnings allowance because, having attained pensionable age, he had given up regular employment.

2. At the claimant's request I held an oral hearing of his appeal. He attended and was represented by Ms K. Parkis of Southwark Council's Welfare Rights Unit. The adjudication officer was represented by Miss N. Yerrell of the Solicitor's Office, Departments of Health and Social Security.

3. Paragraph 13(1) of Schedule 7 to the Social Security Contributions and Benefits Act 1992 provides that -

"13(1) Subject to the provisions of this Part of this Schedule, a person who -

(a) has attained pensionable age; and

(b) gives up regular employment on or after 10th April 1989; and

(c) was entitled to reduced earnings allowance ... on the day immediately before he gave up such employment,

shall cease to be entitled to reduced earnings allowance as from the day on which he gives up regular employment."

The claimant attained pensionable age on 10 August 1990. According to his account, he had terminated his employment as a porter on 31 January 1990 "due to illness and depression". On receipt of that information an adjudication officer on review

terminated the award of reduced earnings allowance because he took the view that the claimant had given up regular employment and thus satisfied the conditions in paragraph 13(1) of the Schedule.

4. The tribunal's findings of fact were -

"The Appellant suffered an industrial accident on 22 September 1967 when, in the course of his employment as a dock labourer he injured his back when he bent down to pick up a carton of cheeses onto the scaleboard. He reached pensionable age of 65 on 10 August 1990. He has had various jobs since then. On 31 January 1991 he left his employment because of ill health without asking about the possibility of sick leave. He had to have a hernia operation soon afterwards."

The reasons given for their decision were -

"(1) The Tribunal considered that the Appellant left his work voluntarily. They paid regard to CDR 2/93 a Commissioner's Decision.

(2) The Appellant did not enquire as to the possibility of taking sick leave, instead of leaving the employment permanently."

Ms Purkis submitted that those findings and reasons were insufficient and that the tribunal's decision was accordingly erroneous in law.

5. In R(1) 2/93, a case which concerned this same claimant in relation to an earlier period of his employment history, the Commissioner said, in relation to "gives up regular employment" in paragraph 13(1)(b) -

"20. In my judgment, the words "gives up" are clear and unambiguous. They are not used in an unusual sense and to construe the words in their natural and ordinary meaning does not lead to a result "which cannot reasonably be supposed to have been the intention of the legislature", to quote the words of Lord Reid in Pinner v. Everett above. It is clear that reduced earnings allowance is not abolished but is to be phased out. It is contemplated that in certain circumstances entitlement to the allowance shall continue for life. But there will be no new entitlements. "Gives up regular employment" is a phrase which in its context has a readily understandable natural and ordinary meaning and I see no ground, as a matter of construction, for giving it some meaning other than that which it naturally bears."

It follows that it is a question of fact in each case whether regular employment has been given up. It is I think also clear, as Miss Yerrell agreed, that a person who gives up a particular job does not necessarily on that account alone give up regular

employment. There are many reasons why an employee might give up a particular job; he may do so without giving up regular employment. In R(I) 2/93 the claimant had been dismissed from his particular employment and the Commissioner stressed that the job loss in that case had not been voluntary. I do not take that to mean, as Miss Yerrell at first suggested, that where a person had voluntarily given up an employment it followed that he had given up regular employment. A person, as it seems to me, is entitled for example to change jobs without giving up regular employment.

6. It follows from what I have said that there should have been full findings of fact as to all matters surrounding the termination of the claimant's employment. So the tribunal in this case should have made findings as to (a) the nature and severity of the claimant's illness because of the relevance of those matters to the question whether the claimant could ever realistically get back into employment (b) the claimant's intentions at the time and (c) his attempts, if any, to obtain further regular employment and of course findings as to whether he had actually done so. And there may be other matters which bear on the point of whether, by leaving his job as a porter through illness, the claimant had given up regular employment.

7. It is in my view plain that the tribunal's findings of fact are not adequate and they were wrong to suggest, in their reasons, that the fact that the claimant left his employment voluntarily was conclusive. The tribunal's decision is erroneous in law and I set it aside. The case must be reheard by a differently constituted tribunal.

(Signed) R A Sanders  
Commissioner

Date:

  
4/11/84