SC

RCA - Late Claim

MR/SH/1/MM

Commissioner's File: CI/417/1992

SOCIAL SECURITY ACTS 1975 TO 1990

SOCIAL SECURITY ADMINISTRATION ACT 1992

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Appeal Tribunal: Harrow

Case No: 217/4521

1. This appeal is allowed. My decision is that the decision of the Harrow social security appeal tribunal given on 7 February 1992 is erroneous in point of law. I set the decision aside. There is no valid claim for special hardship allowance in existence. The claim for reduced earnings allowance from 1 October 1986 is referred to a differently constituted tribunal for redetermination.

2. The claimant suffered an industrial accident on 18 February 1977. She received injury benefit from 22 February 1977 to 12 March 1977 and from 7 April 1977 to 11 June 1977. She claimed disablement benefit and was examined by adjudicating medical authorities on 14 February 1978, 17 November 1978, 13 August 1985 and 14 March 1990. The first two examinations arose out of her original claim and resulted in assessments of disablement covering the period from 12 June 1977 to 11 December 1978. The third examination, on 13 August 1985, was in connection with an application for review and resulted in an assessment of disablement of 2% from 29 February 1984 for life which, I presume, led to the payment of a small disablement gratuity. The fourth examination, on 14 March 1990, was in connection with another application for review and resulted in

an assessment of disablement of 6% from 6 July 1989 for life which, I presume, did not lead to any further payment of disablement benefit.

3. It appears that from 12 June 1977 the claimant returned to her former occupation as a nursing auxiliary. However, she was incapable of work from 14 March 1984 to 14 July 1985. During that period, she was examined by a doctor and was advised that she should transfer to lighter duties. Accordingly, she worked as a ward clerk/receptionist from 15 July 1985 until she was retired on medical grounds on 11 June 1991 (although it seems that she may have been absent during her last week of employment).

4. The claimant made her claim for reduced earnings allowance on a form dated 27 June 1991 which was received in the local office on 1 July 1991. She indicated that she wished to claim from February 1977. On 4 September 1991, an "adjudicating medical authority" advised that they were of the opinion that the claimant was permanently incapable of following her regular occupation and had been so incapable since 14 March 1984. They were also advised that she had been incapable of any remunerative employment during that period. Since the claimant did actually work during that period, that presumably is to be taken as advice that she was not capable "of following employment of an equivalent standard". The adjudication officer decided:-

> "The claimant is not entitled to reduced earnings allowance from 16.3.84 to 26.3.91 (both dates included).
>
> This is because her claim for that period made on 1.7.91 was not made within the time limit set out in regulations and she has not proved that there was continuous good cause before 27.6.91 for the delay in making the claim.
>
> [The claimant] is not entitled to reduced earnings allowance from and including 27.3.91 because she was not entitled to reduced earnings allowance on 30.9.90 and throughout the period from 1.10.91 up to 27.3.91 there has not been continuous entitlement to the benefit."

The adjudication officer referred to sections 59A(1A) and 165A of the Social Security Act 1975, section 3(2) of the Social Security Act 1990 and regulation 19 of, and Schedule 4 to, the Social Security (Claims and Payments) Regulations 1987. I note that no decision was made in respect of the period before 16 March 1984 but it now seems that the claimant does not seek to claim in respect of that period so the lack of decision is of no significance. The claimant appealed saying:-

> "In my view, I did have good cause for any delay in making my claim. From 1977 I have pursued my claim for industrial injury which went to tribunal who found in my favour, a positive case.
>
> During these procedures I was given the information that I

was not entitled to any other state benefits and I assumed this included reduced earnings allowance.

However at the last 1990 medical I was told to apply for reduced earnings allowance which I did, just to be turned down."

At the hearing before the tribunal, the claimant's representative stated that she wished the question of "good cause" to be dealt with only from 1985. I do not see why that date was chosen. I can see that the claimant may not have wished the issue to be considered in respect of the period when she was working in her former occupation (when presumably she would not be entitled to special hardship allowance, which was then the benefit equivalent to reduced earnings allowance) but I do not understand why the claim was abandoned in respect of the period of incapacity of work from 14 March 1984. In the chairman's note of evidence, there is recorded:-

"In 1985 she told the Department of Social Security that she had changed her occupation to that of a clerk/receptionist. No one at that time advised her to claim reduced earnings allowance until 11 June 1991."

5. The tribunal dismissed the appeal. Their findings of fact were:-

"Reduced earnings allowance claim was received on 1 July 1991. The appellant claimed disablement benefit on 11 January 1978. The form referred to special hardship allowance (now reduced earnings allowance) if she would be unable to go back to her regular occupation; she was able to work at her regular occupation until 1984. The delay in her claim for reduced earnings allowance was because she did not know that she could claim that benefit and believed she had told the Department everything that would enable them to inform her of her rights. On 4 September 1991 a Board was of the opinion that she was permanently incapable of her regular occupation from 14 March 1984 and was not capable of any alternative remunerative employment. She had worked as a ward clerk/receptionist from 15 July 1985 to 4 June 1991. She has been unable to work since."

The tribunal's reasons for decision were:-

"The time limit for claiming reduced earnings allowance is 3 months before claim (on 1 July 1991) unless claimant can show good cause for delay for the period claim. The appellant has said that she wished to show good cause from 1985.

The tribunal applied the interpretation "good cause" in the decision R(SB) 6/83. The onus is on the appellant to prove good cause (CS/371/49(KL)). The general rule is that ignorance of rights is not good cause, it is the general duty of a claimant to find out her rights and how to

exercise them. The tribunal however took account of the appellant's circumstances (R(S) 3/79) and what she has said today and in the papers to ascertain whether she had done or omitted to do what could reasonably be expected of her in failing to make independent enquiries. The appellant did not follow the advice on the form for a disablement benefit on 11 January 1978 but at that time was in her regular occupation. However she did not make enquiries until she was told of reduced earnings allowance in 1991 and taking everything into account the tribunal are not satisfied that she has proved continuous good cause for her delay in claiming, from 1984 to 26 March 1991 (Social Security (Claims and Payments) Regulations, regulation 19.

In accordance with section 59A(1A) of the Social Security Act 1975 the appellant is therefore not entitled to reduced earnings allowance from and including 27 March 1991 because she was not entitled to it on 30 September 1990."

6. The claimant appeals with the leave of the tribunal chairman, on the grounds that the tribunal gave inadequate reasons for their decision and their decision discloses an error of law in their understanding of the facts to be applied. The adjudication officer now concerned with the case submits that the tribunal did give adequate reasons and, implicitly, submits that there was no error of law in the approach to the issue of "good cause". The tribunal were clearly right to place no weight on the reference to special hardship allowance on the claim form for disablement benefit signed in 1978 at a time when the claimant had no possible entitlement to special hardship allowance because she had returned to her regular occupation. The tribunal has decided that the claimant did not have good cause for delay in claiming simply because she did not make enquiries about her possible entitlement. However, as was pointed out in R(S) 8/81, a person cannot be expected to make enquiries if she does not believe there is anything to enquire about. It is one thing to suggest that people must make enquiries about sickness benefit, because everyone knows that there are some benefits payable to people who are incapable of work. In effect, there was a presumption, perhaps rebuttable in some circumstances, that a claimant knows of the existence of sickness benefit. It is a wholly different matter to suggest that people must make enquiries about reduced earnings allowance, which has, like its predecessor special hardship allowance, always been one of the less well known benefits in the social security system. In the absence of any evidence that the claimant should have been alerted to the existence of special hardship allowance when she applied for the review of the assessment of her disablement in 1984 or to the existence of reduced earnings allowance when she applied for the review in 1990, it is difficult to see how it could reasonably be expected that the claimant should have claimed reduced earnings allowance earlier than she did. However, in her letter of appeal to the tribunal, the claimant stated that she was told to apply for reduced earnings allowance at "the last 1990 medical". There is no explanation of the apparent conflict between that evidence and the evidence given

to the tribunal to the effect that she was first advised about reduced earnings allowance in June 1991. Therefore, although I find that the tribunal erred in law in approaching the issue of "good cause" in the way they did, I do not substitute my own decision and I refer the case for reconsideration by a differently constituted tribunal.

7. However, as the claim is currently formulated, it is not possible for the tribunal to consider entitlement to any benefit for any period before 1 October 1986. That is because the claim is for reduced earnings allowance which was introduced only from that date. Before then, there was an almost identical increase of disablement benefit known as special hardship allowance and payable under section 60 of the Social Security Act 1975. However, a separate claim for special hardship allowance was always required, notwithstanding that it was an increase of disablement benefit, and that fact continues to be recognised in Schedule 4 of the Social Security (Claims and Payments) Regulations 1987 (hereinafter "the 1987 Regulations") where different time limits are prescribed for reduced earnings allowance and special hardship allowance in paragraphs 5 and 10 respectively. There is nothing in Schedule 1 to those Regulations, nor in any transitional provision of which I am aware, which provides for a claim for reduced earnings allowance to be treated as a claim for special hardship allowance. In practice claims for reduced earnings allowance seem always to be treated as claims for special hardship allowance so far as is necessary and doubtless that result can be achieved by the Secretary of State accepting a claim for reduced earnings allowance as sufficient to constitute a claim for special hardship allowance in exercise of his powers under regulation 4(1) of the 1987 Regulations. The Secretary of State does not appear to have considered that question in the present case and so there is no valid claim for special hardship allowance in existence. A late claim may, of course, now be made. I would expect the adjudication officer to refer the question of "good cause" for the delay to the tribunal to whom the present case is referred. The tribunal will doubtless accept that there had been good cause for the delay from 27 June 1991 until the date of claim, provided that the claim is put in within a short time after this decision has been communicated to the claimant.

8. Finally, the adjudication officer now concerned with this case submits as follows:-

> ".... I consider that the tribunal decision that the claimant was not entitled to a reduced earnings allowance from and including 27/3/91 was erroneous in law. In reaching this decision the tribunal have relied upon section 59A(1A) of the Social Security Act 1975. Section 59A(1A) came into force on 1/10/90 and provided that where there was entitlement to a reduced earnings allowance on 30/9/90 any subsequent break in entitlement of one or more days would result in disallowance on a renewal claim. I would submit that this provision only applies to claims

where entitlement is established on 30/9/90 and where, on an initial or renewal claim, entitlement to a reduced earnings allowance is not established on that day a claimant will not lose entitlement under section 59A(1A). As the tribunal have decided that the claimant was not entitled to a reduced earnings allowance on 30/9/90, due to late claim, section 59A(1A) can have no effect on the claim. Therefore, I consider that the tribunal erred in law and I would support the appeal to the Commissioner."

I accept that submission. In fairness to the tribunal, they were adopting a submission made by the adjudication officer originally concerned with the case which was not opposed by the claimant's representative. I would add only that the date of claim in this case should, by virtue of regulation 6(1) of the 1987 Regulations, be 1 July 1991, as the tribunal found. It appears to have been accepted by both the tribunal and the adjudication officer originally concerned with the case that there was good cause for delay from 27 June 1991 to 1 July 1991. In those circumstances, the claimant is, it would seem, entitled to reduced earnings allowance at the maximum rate from 27 March 1991. However, I do not make a final determination in respect of this part of the claim because I do not consider that I have sufficient information as to the claimant's present capacity for work to determine the period for which an award of benefit should be made. That matter must also be considered by the tribunal to whom this case is referred.

(Signed) M Rowland
Deputy Commissioner

(Date) 3 August 1993