



THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case No: CJSA/2181/2001

SOCIAL SECURITY ACT 1998

**APPEAL FROM DECISION OF AN APPEAL TRIBUNAL
ON A QUESTION OF LAW**

DECISION OF THE SOCIAL SECURITY COMMISSIONER

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Claimant :

Tribunal :

Tribunal Case No. :

1. The claimant's appeal is dismissed.
2. The claimant, a 60 year old man, has been in receipt of Jobseekers Allowance ("JSA") for some years. In October 1999 he was issued with a written notice requiring him to attend at a Job Centre on 9 November 1999 between 2.30 p.m. and 3 p.m. to provide a signed declaration. He failed to so attend. He did attend on 10 November 1999 when he signed on as unemployed from 27 October 1999 to 9 November 1999. On 10 November 1999 he explained his reasons for failing to attend to provide a signed declaration, namely, that having signed on to "New Deal" for the unemployed on 22 October 1999, he attended a "New Deal group session on 5 November 1999, which broke his usual fortnightly attendance sequence, and that he did attend the Job Centre on 9 November to look at the vacancy board, but it did not occur to him that it was his "signing on" day.
3. On 10 November 1999 a decision was issued to suspend the claimant's JSA due to his non-attendance on 9 November 1999 to provide a signed declaration.
4. The claimant subsequently gave a further undated written explanation for his non-attendance which repeated that his reason for not attending was the break in the fortnightly sequence, but also stated that he had visited his doctor a month before due to suffering bouts of light-headedness and had been attending the surgery every Monday for the last two weeks for his doctor to monitor his blood pressure. He ended by stating that if his doctor agreed that his uncharacteristic lapse of memory could be attributed to his medical condition he would obtain confirmation in writing from his doctor.
5. The claimant appealed to the appeal tribunal against the decision to suspend JSA. On 31 January 2000 the tribunal dismissed his appeal on the basis that he had not shown good cause, within five working days of his failure to attend the job centre to provide a signed declaration, as to why he failed to do so.
6. The claimant appealed against the tribunal's decision with the leave of the Commissioner granted on 27 September 2001. His grounds of appeal are set out in his Application for Leave to Appeal signed on 1 June 2001. The grounds are that he was undergoing further tests for his memory lapses, giddiness and blood pressure and was due to have a brain scan. He asked for a delay in the appeal until a diagnosis was made by his doctor.
7. The Secretary of State does not support this appeal. In his submissions, dated 31 October 2001, he submits that the tribunal did not err in law as the claimant failed to show good cause for his non-attendance within the requisite five working days. The claimant states in his Observations that the specialist saw nothing on the brain scan which would cause attacks of giddiness and memory lapses, but that cell deterioration was due to ageing.

Relevant legal provisions

8. The claimant was required to attend the Job Centre on 9 November 1999 to provide a signed declaration (see Regs. 23 and 24(6) and (10) of Jobseeker's Allowance Regulations 1996 ("JSA Regs"). It is accepted that he failed so to do. The consequence of such a failure is that his entitlement to JSA ceases in accordance with Regs. 25 and 26 of JSA Regs, unless he had good cause for that failure.

Good cause

9. Reg. 27(1) of the JSA Regs. provides that:

“Entitlement to a jobseeker’s allowance shall not cease if the claimant shows, before the end of the fifth working day after the day on which he failed to comply with a notice under regulation 23 or to provide a signed declaration in accordance with regulation 24, that he had good cause for the failure.”

Regs 28 and 29 set out matters to be taken into account in determining whether a claimant has good cause and Reg 30 sets out circumstances in which a claimant is to be regarded as having good cause. None of these matters or circumstances are relevant to the present case. Other matters may be considered in deciding whether a claimant has good cause.

10. The tribunal did consider whether the claimant had good cause and decided that he did not on the basis of the explanation that he gave on 10 November 1999.

11. The tribunal regarded the explanation set out in paragraph 4 of this Decision as coming some time after the five day limit and, stated in their reasons that this could not assist the claimant in providing good cause as it was not produced within five days of his failure to attend on 9 November 1999.

12. The burden is on the claimant to show good cause (see Reg. 27(1) JSA Regs and Decisions R(S) 2/63 and CS 371/49). It is for him to show good cause within the five working days limit required by Reg. 27(1).

13. I accept the Secretary of State’s submission that the tribunal have explained in the third paragraph of their Reasons that it was some time after the expiry of the five day limit that the claimant provided the further explanation set out in paragraph 4 of this Decision and that is why they did not consider that evidence. I do not find that they erred in failing to identify a particular date for this document, particularly as it was undated. It was for them to decide whether such information came within or outside the requisite five day period and they decided that it came some time after the expiry of the five day limit. There was sufficient evidence on which they could come to this decision, in that that document started:

“With reference to my recent appeal against suspension of benefit for Tuesday the ninth of November” (emphasis added).

This would appear to be a reference to the claimant’s appeal. He signed the appeal form on 24 November 1999. In the absence of any evidence to the contrary, the reference to his “recent” appeal in the undated document indicates that that document was unlikely to have preceded that appeal form and, hence, was more likely to have been written after the five day limit. I note in passing that the claimant has not sought to submit in his Observations that the undated document was produced within the five day limit even though this point was highlighted by the Commissioner when granting leave and also in the Secretary of State’s submissions.

14. I hold that the tribunal were entitled to find that the explanation given on 10 November 1999 (within the five day period) did not amount to good cause. They made adequate findings of fact and gave adequate reasons in relation to the explanation given. That

explanation was, in effect, that he forgot to "sign on" because his attendance at a group session the previous week had broken his fortnightly attendance sequence. The fact that he forgot to attend did not, of itself, amount to good cause. He should have attended to his affairs with due diligence and care. The tribunal correctly looked at good cause from the position of a reasonable person. This conforms with the approach set out in Decisions R(S) 2/63, paragraph 11 and CS 371/49.

15. For the reasons given above I dismiss this appeal. For the avoidance of doubt I should make it clear that my dismissal of the claimant's appeal does not reflect adversely either upon his honesty or upon his integrity.

(Signed) A A Green
Deputy Commissioner

(Date) 7 February 2002