

Bulletin 168  
[SHERIFF]



**THE SOCIAL SECURITY COMMISSIONERS**

*Commissioner's Case No: CISA/2327/2001*

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY ACT 1998

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

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

**MR COMMISSIONER JACOBS**

*Appellant:*  
*Respondent:*  
*Tribunal:*  
*Tribunal's Case No:*

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. My decision is as follows. It is given under section 14(8)(a)(ii) of the Social Security Act 1998.
  - 1.1. The decision of the Southampton appeal tribunal, held on 17<sup>th</sup> January 2001, is erroneous in point of law.
  - 1.2. I set it aside, make findings of fact and give the decision appropriate in the light of them.
  - 1.3. I find these facts. The claimant's appeal is against both the supersession decision terminating his award of a jobseeker's allowance and against the decision that there is no good cause for his delay in making the new claim. As regards the termination of the award, the claimant was properly notified of the date, time and place of the interview and he did not show good cause for not attending within 5 days. As regards the delay in claiming, there is no evidence to bring the claimant within any head of good cause in regulation 19(5) of the Social Security (Claims and Payments) Regulations 1987.
  - 1.4. My decision is to confirm both decisions of the Secretary of State that were under appeal to the appeal tribunal.

**The appeal to the Commissioner**

2. This is an appeal to a Commissioner against the decision of the appeal tribunal brought by the claimant with the leave of Mr Commissioner Williams, who also directed an oral hearing of the appeal.
3. The oral hearing was held before me in Cardiff on 19<sup>th</sup> February 2002. The claimant did not attend and was not represented. The Secretary of State was represented by Mr H James.
4. The Secretary of State supports the appeal, but not in a way that is to the claimant's advantage. I accept the Secretary of State's submissions on how the Secretary of State and the appeal tribunal should deal with cases in which a claimant seeks to fill a gap in entitlement to a jobseeker's allowance between the closure of a claim and the making of a new claim.

**The history of the case**

5. The claimant was awarded a jobseeker's allowance from and including 27<sup>th</sup> September 1999. An interview was fixed for him on 19<sup>th</sup> October 2000 at 2:10 p.m. This was authorised by regulation 23 of the Jobseeker's Allowance Regulations 1996.
6. A letter was handed to the claimant notifying of the appointment. It is at page 49. He signed to confirm receipt. His signature is at page 50. It is beyond argument that he received notification of the interview.
7. The claimant did not attend on the day appointed. He accepts that. The consequence of his not attending was that his entitlement to a jobseeker's allowance would cease under regulation 25(1)(a), unless he showed good cause before the end of the fifth working day after the appointment under regulation 27.

8. The claimant did not show good cause. Indeed, he gave no explanation at all within the 5 days allowed. The Secretary of State argues that the claimant was sent a letter on 19<sup>th</sup> October 2000 informing the claimant of the need to contact the jobcentre within 5 days. A copy of the standard letter is at page 51. The claimant denies receiving it. However, there was no duty on the employment officer under the legislation to remind the claimant that he did not attend his appointment or to warn him of the time limit for showing good cause.
9. The claimant's claim for jobseeker's allowance was 'closed' from and including 18<sup>th</sup> October 2000, as he had last signed on on 17<sup>th</sup> October 2000. According to the computer printout at page 2, that action was taken on 26<sup>th</sup> October 2000.
10. The next time that the claimant went to the jobcentre to sign on he found that his claim had been closed. He had to make a new claim for a jobseeker's allowance. He claimed for the period from and including 18<sup>th</sup> October 2000. A new award of jobseeker's allowance was made, but only from (I believe) 31<sup>st</sup> October 2000.
11. The claimant appealed against that decision. The Secretary of State's submission to the appeal tribunal dealt only with the delay in claiming, arguing that the claimant did not fall within regulation 19 of the Social Security (Claims and Payments) Regulations 1987. The tribunal dealt with the case on the same basis, dismissing the appeal at a paper hearing.

### Legal analysis

12. Page 2 of the papers records: 'Claim closed'. That language originated in the adjudication procedures that applied before the Social Security Act 1998. It regularly lead to uncertainty. It has been carried over into the new adjudication procedures under that Act. It remains uncertain. It is also now inappropriate, as section 8(2)(a) provides that once a decision has been made on a claim, it ceases to subsist. So, there is no claim left to close.
13. As I understand it, awards of jobseeker's allowance are usually made for an indefinite period under regulation 17(1) of the Social Security (Claims and Payments) Regulations 1987. There is nothing to suggest that the award made in this case was for a definite period.
14. On that basis, the claimant's award of a jobseeker's allowance was made for an indefinite period. Once the decision was made on the claim, it was final until changed under the adjudication procedures: see section 17(1) of the Social Security Act 1998.
15. As the claimant's award was for an indefinite period, it was subject to the condition that he continued to satisfy the requirements for entitlement: see regulation 17(4) of those Regulations. However, regulation 17(4) does not provide an independent basis under which an award may be terminated. The Tribunal of Commissioners in *R(IS) 2/97, Appendix paragraph 19* decided that its effect was to require the decision making the award to be reviewed under the normal review provisions. Those review provisions have now been repealed, but the Tribunal's reasoning applies to the new revision and supersession provisions under the Social Security Act 1998.
16. Regulation 25 of the Jobseeker's Allowance Regulations 1996 provides that the claimant's 'entitlement to a jobseeker's allowance shall cease'. It is possible for legislation to provide for an award to come to an end automatically without any action being taken by the Secretary of State, bypassing the effect of section 17. Regulation 25 is made under, and

reflects the language of, section 8(2)(a) of the Jobseekers Act 1995. Both refer to entitlement ceasing. But neither is sufficiently clear to displace the normal adjudication procedures which apply throughout the social security legislation. None of the other enabling provisions specifically identified in the Jobseeker's Allowance Regulations 1996, authorises that to happen. And I do not know of any provision that might fall under the "all other powers enabling in that behalf" formula. If it were made under section 60(1) of the Social Security Administration Act 1992, the predecessor of section 17 of the 1998 Act, it would have been specifically identified.

17. It follows that the claimant's indefinite award of a jobseeker's allowance could only be terminated by a decision of the Secretary of State on supersession under section 10 of the Social Security Act 1998. The closure of the claim has to be interpreted as a termination of the claimant's award on a supersession. That decision is one made on an award of a relevant benefit, which carries the right of appeal to an appeal tribunal under section 12(1)(a) of the Act. Mr Commissioner Levenson came to the same conclusion under the pre-1998 adjudication procedures in *CJSA 4775 1997*.

18. The claimant made a new claim for a jobseeker's allowance and asked for it to be considered from and including 18<sup>th</sup> October 2000. The Secretary of State was required to take that request at face value and determine whether the claimant had good cause for the delay in claiming under regulation 19(4) and (5) of the Social Security (Claims and Payments) Regulations 1987. However, the Secretary of State was also entitled to treat the request as an application for the termination the award to be revised or superseded. This approach is to the advantage of claimants who may not know of, or fully understand, the adjudication procedures. It has been approved by Tribunals of Commissioners in *R(I) 11/62 paragraph 12* and *R(SB) 9/84, paragraph 17(i)*. It could have been followed in this case, but as far as I know it was not.

19. The terms of the claimant's appeal to the appeal tribunal was sufficiently broad to encompass both the termination of the previous award and the refusal to begin the new award on 18<sup>th</sup> October 2000. The tribunal should have treated that as an appeal against both decisions. Neither appeal was late as the letter of appeal was received within one month of both the termination and the decision on the new claim. The Secretary of State had not treated the new claim as an application for a supersession of the decision terminating the award, but in view of the terms of the claimant's appeal, the tribunal should have treated it as an appeal against both decisions. It did not and that is an error of law.

#### **How does this help the claimant?**

20. It does not.

21. The claimant has only ever taken a procedural point, that he received no communication from the jobcentre before he attended on his next signing day. That was not a breach of the Regulations. The claimant knew of the date of the interview and, if he had a reason for not attending, he should have contacted the jobcentre to report it. He did not.

22. As regards good cause for late claim, the tribunal was correct that there was nothing in the evidence before it to show that the claimant fell within any of the categories of good cause. Nor has anything that the claimant has written on his appeal to the Commissioner shown good cause.

23. As regards good cause for not attending the interview, the claimant did not report any reason within the 5 days allowed. Indeed, he has still not given any explanation.

**Conclusion**

24. So, the decision of the tribunal was wrong in law and must be set aside. But there is nothing to suggest that any information would be forthcoming that could result in a more favourable outcome if I directed a rehearing. In those circumstances, it is expedient for me to give my own decision. It is in paragraph 1.4.

**Signed on original**

**Edward Jacobs  
Commissioner  
19<sup>th</sup> February 2002**