

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I dismiss the claimant's appeal. The decision of the Southampton appeal tribunal of 11 May 2005 is not erroneous in point of law. The appeal tribunal dismissed the claimant's appeal against the decision of the Secretary of State notified on 15 April 2005 that jobseeker's allowance is not payable from 15 April 2005 to 28 April 2005. It follows that the decision of the appeal tribunal stills stands.
2. This is one of two appeals against decisions of the tribunal, both arising out of a claim to Jobseeker's Allowance on 29 July 2004 when an award was made for an indefinite period. I have dealt with the other appeal under Commissioner's reference CJSA/3102/2005.
3. On 10 March 2005 the claimant was referred for a 13 week Intensive Activity Period employment programme ("IAP"), under regulation 75(1)(iv) of the Jobseekers Allowance Regulations 1996 (" the Regulations"). The course commenced at 9:30 a.m. on 21 March 2005. The claimant failed to arrive on time that day, arriving at some time between 10:30 a.m. and 11:30 a.m. On his arrival he was informed that he was unable to start the course due to his lateness. A decision maker superseded the awarding decision and determined that a sanction should be imposed in the terms given above. The sanction was imposed because the claimant failed, without good cause, to attend the IAP on which he had been given a place. The appropriate sanction in this case is a two-week fixed period under regulation 69(1)(a) of the Regulations. There is no discretion to vary this.
4. The claimant appealed to the tribunal against the decision to impose the sanction. The tribunal dismissed his appeal on the basis that first, his late arrival at the course amounted to a failure to attend the course and secondly, that he did not have good cause for his failure to attend. The claimant had argued before the tribunal that he had caught the last train home from London the night before the course was due to start and had slept through his alarm that morning. He had spent the weekend at his father's and some time over the weekend his family had received notice that the claimant's grandmother had been taken ill and had been rushed into hospital. He had spent some time at the hospital and did not wish to be seen to be leaving the family too early on the Sunday night.
5. The claimant appeals against the tribunal's decision with the leave of a Commissioner. His grounds are that he did attend the course although he was late in arriving and therefore did not fail to attend, that he had good reason for his lateness, and that the course provider has allowed other claimants to start late, from his own knowledge. The Commissioner, when granting leave to appeal, asked the following questions: Was the tribunal correct to hold that a failure to attend the course at the time stipulated by the course provider was a failure to attend the course? Should he have been disqualified if he was only a few minutes late? If the claimant is late attending a course, does not the question of whether he has failed to attend depend on whether it is practicable for him to participate in the course after his arrival?
6. The Secretary of State's representative does not support this appeal. In a submission, dated 9 November 2005, she argues that the tribunal had considered the issue of good cause, which

is limited to specific circumstances as defined by regulation 73(2) of the Regulations. She submits that the tribunal, having considered this issue, has given adequate reasons for reaching its conclusion that the claimant did not have caring responsibilities for his grandmother, regulation 73(2)(d), nor was he required to deal with some domestic emergency, regulation 73(2)(h), and that no other provisions of that regulation applied to the claimant. She further submits that the onus is on the claimant to arrive at the employment programme on time, irrespective of his reasons for lateness, citing decision CJSA/2181/2001, a decision of a Deputy Commissioner, in support. She also submits that the word "attended" is not defined in the legislation and that the course provider, who has been appointed by the Secretary of State to provide employment courses, is in the best position to judge whether a person who attends late can be accommodated on the course. Finally, she submits that the concept of attendance for the purposes of section 19(5)(b)(iv) of the Jobseekers Act 1995 means more than simply arriving at the scheme or programme regardless of the start time.

7. So far as concerns the grounds raised in this appeal, the tribunal will only err in law if its findings of fact are such that no reasonable tribunal could have made such findings on the evidence before it or if its reasoning is inadequate. The statement of reasons must show the claimant what evidence has been accepted and rejected, and how the law, applied to those findings of fact, results in the decision made by the tribunal. In this appeal, both the claimant and a presenting officer, on behalf of the Secretary of State, attended the tribunal hearing. The record of proceedings shows that all the relevant issues were canvassed in the hearing of this appeal. The two appeals were heard consecutively, the duration of which was one hour. It is apparent from the statement of reasons that the tribunal accepted all the claimant's evidence and its findings of fact reflect that. I conclude that the tribunal has not made any findings of fact which no reasonable tribunal faced with the evidence in this case could have made.

8. I now turn to the question of whether the tribunal has correctly applied the law to those findings of fact in reaching its decision. I have been referred to decision CJSA/2181/2001. It concerns a claimant in receipt of Jobseeker's Allowance who was issued with a written notice requiring him to attend at a job centre on 9 November 1999 between 2:30 p.m. and 3:00 p.m. to provide a signed declaration. He failed to so attend but did attend on the following day when he signed on as unemployed and explained his reasons for failing to attend the day before. In paragraph 14 of that decision the Deputy Commissioner says,

"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 the reasonable person. This conforms with the approach set out in decisions R(S) 2/63, paragraph 11 and CS 371/49."

In this appeal the tribunal has correctly identified that "good cause" is limited to the circumstances set out in regulation 73(2)(a) to (j) of the Regulations, and has concluded that none of them do apply to the claimant.

9. However, the claimant submits that he attended the course on the correct day, albeit belatedly. I consider the decision in Hinchley v. Rankin [1961] 1 W.L.R. provides support for the tribunal's decision. The case concerned the father of a child of compulsory school age who was convicted for his child's failure to attend regularly at school during a certain period. On appeal to the Quarter Sessions a certificate was produced in evidence showing that over the period in question the child was present 27 and absent 29 times at school. The time for commencement of the morning session laid down for the child's school was 9:15 a.m. Evidence was given that the school attendance register was closed at 9:45 a.m. and that pupils arriving after that time would be marked absent and shown as non-attendants for that session. On appeal from the assistant recorder's decision that there was no real evidence of non-attendance, other than non-attendance before 9:45 a.m., it was held that, since the Education Act provided for full-time education and required regular attendance for that purpose, the attendance required was for the periods prescribed by the local education authority, on whom was laid the duty of providing the education, so that if the child arrived at school after the register was closed, there was a failure to attend within the meaning of section 39(1). In this appeal, similarly, the tribunal concluded that the claimant arrived at the course after the course provider had effectively closed its register for the day.

10. The statutory context of both provisions has similarities. It is to ensure that attendees attend courses of instruction in accordance with the requirements of the course provider. Indeed in the context of Jobseeker's Allowance the discipline of attending at a particular time is, in itself, one of the skills which a job seeker needs to acquire in order to prepare himself for regular employment. In those circumstances, I consider that the tribunal were correct to construe the word "attend" as meaning "attend at the time prescribed by the course provider". No doubt other considerations might arise if the claimant had attended only a few minutes late, but in this case there can be no doubt that the course provider was fully entitled to treat lateness in excess of one hour as not meeting the requirements of the course.

11. The claimant submits that he was aware, from previous experience, that other people had been allowed to start courses after they had arrived late. In his evidence to the tribunal he conceded that they may have been lucky. The evidence from the presenting officer was that the course provider did not accept people if they were late. However, regulation 23 of the Regulations, requires a claimant to attend at such place and at such time as an employment officer may specify by a notification which is given or sent in writing. It makes no difference that the course provider had allowed other attendees to start their courses late. The tribunal decided that the onus was on the claimant to arrive at the time stipulated on his notification. I conclude that the tribunal's interpretation of the law in this respect is correct.

12. Finally the claimant raises the issue of his not receiving the decision notice personally after the hearing although he saw two other appellants handed theirs. The claimant received his decision notice through the post the following day. He says that he lives, "approximately 45 to 50 miles from Southampton and the post is not normally that efficient in my experience". He then says, "These two points lead me to believe my decisions were not made lawfully after the appeal".

13. I find nothing to substantiate these assertions. It is often the case that tribunals need to spend some time deliberating before reaching a decision. There is nothing unusual in a decision notice being posted to an appellant at the end of a session. The file copy of the decision notice is noted at the foot as having been issued to both the claimant and the

Secretary of State on the day of the hearing. I see no reason why the decision notice would not have reached the claimant on the following day in the course of first-class post, which I understand to be the normal practice of the Appeals Service. If the claimant is suggesting that the tribunal had reached its decision before the hearing took place, then that is fanciful.

14. I find that the tribunal has found facts based on all the evidence before it, which it was entitled to do. It has properly directed itself on the relevant law and applied that law to the facts it has found. It has reached its decision in consequence and has set out its reasons for its decision, which are clear and adequate. I find no error of law in the decision or the statement of reasons. Accordingly, I dismiss this appeal.

(Signed on original)

P J Thomas

Deputy Commissioner

16 January 2006