Bulletin 151
[Short]

CJSA 2507 2005

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1 I dismiss the appeal. For the reasons below, the decision of the tribunal is not wrong in law.

2 The claimant and appellant is appealing with my permission against the decision of the Cardiff appeal tribunal on 08 03 2005 under reference U 03 185 2005 00074.

3 The claimant left his job on 13 10 2004. He was relocating from his then home to join his fiancée before their marriage. The marriage took place on 06 11 2004. She owned a house in which she was living before the marriage, and where he joined her on relocation. This was some distance from the claimant's home before the relocation and marriage. He had found it difficult to commute between her home and his work. He had been looking for employment in her area, but had not found any.

4 The papers put before the tribunal by the Department were inadequate for a proper consideration of this appeal. For example, they did not include the full claim form or the proper details of the relevant decisions. But they were supplemented by the claimant. It is reasonably clear that the claimant was awarded jobseeker's allowance from and including 29 10 2004 in a decision made on or before 1 12 2004, and that this was paid clerically. It then appears that a decision said to be a supersession decision was taken on 22 12 2004 "because I have determined that a sanction should be imposed". A sanction of 8 weeks loss of benefit was imposed. The appeal went to a tribunal that heard the case at a paper hearing. It reduced the sanction to a loss of 3 weeks benefit.

5 When I considered the application, I took note of the allegation by the claimant that he was subject to sex or gender discrimination in the imposition of the sanction. I expressed a provisional view that that might be arguable with regard to the disqualification for 8 weeks, but not 3 weeks. I had in mind that the decision made for the Secretary of State included a period when the two were married, but the decision of the tribunal in effect stopped at the time of marriage.

6 The claimant's view was that any penalty was unfair both before and after his marriage as against the decision he assumed would be made had he been a woman. He referred to guidelines in the CPAG Guide. His reference, I think, is in chapter 16 of the Child Poverty Action Group's *Welfare benefits and tax credits handbook*, 2005/6 edition, page 421. It states that:

> "If you leave your job for personal or domestic reasons you may have "just cause" if, for example, you give up work to ... move with a partner to take up your job elsewhere. Married women who have left jobs to live with their husbands who have been posted elsewhere by their employers have not usually been sanctioned. Men who leave jobs to live with their wives should also receive the same treatment."

Footnotes make reference to R(U) 19/52 and R(U) 4/87, paragraph 9.

7 In my view the claimant has no arguable case against the imposition of the 3 week disqualification, as against the maximum that could have been applied. Even if it could be argued that there was some discriminatory unfairness after the marriage, I do not see any

reason in law why the tribunal could not impose a disqualification for the period from the claimant leaving his job until the marriage took place. The claimant was 28 at the time. I echo part of the paragraph just cited above (R(U) 4/87, paragraph 9), in a decision by Commissioner Monroe:

> "An examination of the decisions on the topic leads me to think that in general it is only where circumstances are such that a person has virtually no alternative to leaving voluntarily that he will be found to have had just cause for doing so..."

8 I do not need to take a decision about the 8 week period imposed by the Secretary of State. But it should be mentioned that R(U) 19/52 was a decision from the days when Commissioners took decisions of fact as well as of law. And it relied on CWU 38/49 for the following proposition, which it adopted:

> "When the husband had succeeded in finding accommodation for himself and his wife ... the claimant was right in regarding the accommodation so found as the matrimonial home where she should join her husband. "

In R(U) 19/52 the husband (who was in the armed forces) had no option but to move to the new location; his wife followed after he found accommodation for them both; he was due to stay there for two years or so and the move was not temporary; and the employment conditions of the area to which he moved did not make the prospects of her employment there remote. The extent to which either a woman or a man could claim jobseeker's allowance in or beyond those limited circumstances in 2005 would need to be considered if decisive to a case. Society and the job market have changed considerably from the conditions reflected in decisions of Commissioners on the facts made 50 or more years ago.

9 The lack of papers before the tribunal left another question unanswered. The decision imposing the sanction was made as a supersession decision, but no legal basis was stated. For the record, power exists to supersede to impose a disqualification under regulation 6(2)(f) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 if section 19 of the Jobseekers Act applies. That section authorises disqualification for voluntary leaving. I am satisfied that applied here.

David Williams
Commissioner

17 October 2005

[Signed on the original on the date shown]