

THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case No: CJSA/2692/1999

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

MS DEPUTY COMMISSIONER A A GREEN

Claimant : ~~XX~~
Tribunal : Wakefield
Tribunal Case No : S/01/014/1998/02169

1. The adjudication officer's appeal is allowed. My decision is that the decision of the Wakefield Social Security Appeal Tribunal, dated 15 March 1999, is erroneous in law and is set aside. The claimant's case is referred to a differently constituted appeal tribunal for determination.

2. The claimant was made redundant in June 1998 and registered as unemployed on 9 June 1998. On 16 June 1998 he completed his jobseeker's agreement. On 25 June 1998 he selected a vacancy in the job centre for a production operative/labourer. He discussed this vacancy with a member of the job centre staff and was given details about it and an interview was arranged for 26 June 1998. The claimant failed to attend that interview. On 20 July 1998 the employment service wrote to the claimant to find out why he did not attend the interview. He replied that he did not have the money to go to the interview. He was then asked what efforts he had made to try and get to the interview but no answer was received. The adjudication officer reviewed the decision to award jobseeker's allowance and decided to disallow jobseeker's allowance payable to the claimant from 12 August 1998 to 22 December 1998 on the ground that he did not have good cause for his failure to apply for that notified vacancy (see s.19(6)(c) of the Jobseeker's Act 1995 ("JSA 1995").

3. The claimant appealed to the tribunal against that decision. In his appeal form he stated that he had good cause for not attending the interview as he could not find the place of work.

4. On 8 January 1999 the tribunal upheld his appeal. They considered that failure to attend an interview was not encompassed by the words "failed to apply for" a notified vacancy within s.19(6)(c) of the JSA 1995 and that the sanction of disallowing jobseeker's allowance should not have been imposed.

5. The adjudication officer appealed against that decision with the leave of the chairman, dated 15 March 1999, on the grounds that the tribunal erred in law in failing to interpret and apply s.19(6)(c) of JSA 1995 correctly. The claimant has made no comments on the appeal.

Relevant Statutory Provisions

6. Section 19(1) of JSA 1995 provides that even though a person satisfies the conditions for entitlement to a jobseeker's allowance, the allowance shall not be payable in any of the circumstances mentioned in s.19(5) or (6). There is no dispute that the conditions for entitlement were met with respect to the claimant. However, the adjudication officer decided to disallow the jobseeker's allowance on the basis that the claimant's case fell within the "circumstances" set out in s.19(6)(c), namely that the claimant

"has, without good cause, after a situation in any employment has been notified to him by an employment officer as vacant or about to become vacant, refused or failed to apply for it or to accept it when offered to him."

7. In considering s.19(6)(c) the tribunal had to decide:
 - (1) Whether a vacancy had been notified to the claimant by an employment officer;
 - (2) Whether the claimant refused or failed to apply for the vacancy;
 - (3) If the answer to (1) and (2) was "yes", whether he had "good cause" for refusing or failing to apply for the vacancy.

"Notification"

8. The tribunal were entitled to find on the facts that the vacancy had been notified to the claimant by an employment officer. He may have selected the job from the display but he then went on to discuss it with a member of the jobcentre staff, who gave him details of the vacancy and arranged an interview. I agree with the Commissioner's decision in CU/123/1982 where he considered a similar provision in the context of unemployment benefit. In that case the claimant saw a vacancy on display at the employment office, discussed it with an employment adviser and agreed to attend an interview. The Commissioner had no doubt that the vacancy had been properly "notified" to him. The fact that the claimant may have selected the vacancy and initiated discussion about it does not preclude a finding that he was "notified" about it by the employment officer. A Verbal notification suffices (see decision CU/40/1987).

"Refusal" to apply.

9. The tribunal were entitled to find that the claimant had not refused to apply on the evidence before them.

"Failure to Apply"

10. The tribunal accepted that the claimant did not attend for the interview which had been arranged for him. The tribunal disagreed with the adjudication officer's interpretation that failure to attend the interview amounted to failure to apply for employment within the meaning of s.19(6)(c). The tribunal drew a distinction between failure to apply for employment and failure to continue with an application for employment by attending an interview. The tribunal considered that the claimant fell into the latter

category and, thus, his case did not come within the circumstances set out in s.19(6)(c). In their reasons for reaching that conclusion they relied on a proforma document (Document D1) which answered "no" to the questions whether he refused to apply or failed to apply for employment, but answered "yes" to whether he failed to attend the interview. In my view the proforma should not be treated as providing guidance on the statutory interpretation of s.19(6)(c).

11. I hold that the tribunal erred in their interpretation of s.19(6)(c). I interpret this subsection as meaning that once a vacancy has been notified to him a refusal or failure to go about the process of applying for it places the claimant in breach of this subsection unless he has "good cause". In my view the words "to apply for it" connote taking steps to apply for or to pursue the vacancy, whether by writing a letter to the prospective employer or by attending an interview or by other appropriate means. The Commissioner in CU/123/82 decided on similar facts that failure to attend a job interview amounted to failure to apply for a "situation". I agree with that decision and adopt a similar interpretation in relation to s.19(6)(c), namely that failure to attend an interview amounts to failure to apply for the vacancy.

12. In the light of my interpretation of s.19(6)(c) the decision of the tribunal must be set aside. The tribunal did not make any findings of fact on "good cause" and I do not consider it appropriate or expedient for me to do so. Accordingly, I remit the case to a differently constituted appeal tribunal to determine the issue whether the claimant failed to apply for the vacancy without "good cause". I direct the tribunal as follows:

- (1.) They should adopt the interpretation that failure to attend an interview for a notified vacancy amounts to failure to apply for the vacancy within s.19(6)(c) of the JSA 1995;
- (2.) In determining whether the claimant had "good cause" they should:
 - (i) disregard any matter relating to the level of remuneration in the employment in question (see s.19(9) of the JSA 1995);
 - (ii) consider whether "good cause" has been established for the purposes of s.19(6)(c) in accordance with Reg. 72 of the Jobseeker's Allowance Regulations 1996, as amended.

13. For the reasons I have given I hold that the decision of the social security appeal tribunal was erroneous in point of law and I set it aside. In accordance with s.14(8)(b) of the

Social Security Act 1998 I refer the case to a differently constituted appeal tribunal for determination.

(Signed) A A Green
Deputy Commissioner

(Date) 17 February 2000