

SOCIAL SECURITY ACTS 1975 TO 1977

CLAIM FOR RETIREMENT PENSION

DECISION OF THE NATIONAL INSURANCE COMMISSIONER

Name: Ivy Annie Carr (Mrs.)

Local Tribunal: Hoxton

Case No: 60/05

Pension No: 2074R290

1. My decisions are that

(a) retirement pension is not payable to the claimant from 29 March 1969 to 24 March 1975; and that

(b) the claimant is disqualified for receiving retirement pension from 25 March 1975 to 24 December 1975.

2. The claimant, who was born on 29 March 1904, has been employed as a shop assistant at all relevant times. She was widowed on 22 March 1976. Her husband had been in receipt of retirement pension since 31 October 1968. During the course of dealing with matters which arose following his death, it came to light that the claimant was not in receipt of retirement pension and that had she claimed at the appropriate time, it would have been payable to her from 3 April 1969. It has now been accepted that a claim was made by her on 25 March 1976 (which was the first day on which she called at the local office of the Department of Health and Social Security in connection with the matter). The insurance officer decided that (a), the pension was not payable to her from 3 April 1969 to 24 March 1975 (both dates included) "because the claim was made on 25.3.76 and the law prohibits the payment of Retirement Pension in respect of any period more than 12 months before the date on which the claim is made"; and that (b), she was disqualified for receiving the pension from 25 March 1975 to 7 January 1976 "because her claim for that period made on 25.3.76 was not made within the time limit set out in regulations and she has not proved there was continuous good cause before 25.3.76 for the delay in making the claim". The claimant's appeal from these decisions to the local tribunal, which she did not attend but at which her daughter gave evidence on her behalf, was disallowed. She then appealed to the Commissioner and Mr. Mark Rowland, an officer of a voluntary body, made submissions on her behalf. He indicated that it was accepted that the decision set out in (a) was well founded. Bearing in mind the provisions of section 82(2)(c) of the Social Security Act 1975, I accept that this is so. In his submission to the Commissioner, the insurance officer has maintained that as it is accepted that

the relevant claim was made on 25 March 1976, retirement pension is payable in any event from and including 25 December 1975. I agree. It has been contended on behalf of the claimant that she had good cause for her failure to claim throughout the period 25 June 1975 to 24 March 1976 (both dates included). There is no dispute, and I accept, that if this is so then retirement pension is also payable to the claimant from 25 March 1975 to 24 December 1975 (both dates included).

3. On 25 March 1976 the claimant stated, "I did not claim retirement pension on my husband's insurance when I was 65 year old, because I thought that since I was working & earning above the limit, I would not be entitled to retirement Pension". It would appear from their findings that the local tribunal gained the impression that the claimant's daughter was asserting that her mother had failed to claim promptly "because of fear that her job would be placed in jeopardy" and also because she regarded the pension as "charity" rather than a payment to which she was entitled, and that they accepted that these assertions may have been well founded. The claimant's daughter has now made it clear that what she intended to convey was "that some elderly people do not ask for retirement pensions for those reasons" (see her letter of 28 March 1977). I accept the explanation given by the claimant's daughter.

4. In his submission to the local tribunal, the insurance officer stated, "According to our records the claimant was deemed retired from 29.3.69 and, according to this Department's usual procedure, she was invited to submit a claim for retirement pension. No claim was submitted by the claimant at the time". In his submission on behalf of the claimant, Mr. Rowland stated "She does not remember receiving the invitation to claim usually sent by the Department and she did not realise that she was entitled to claim until after the death of her husband". On 28 March 1977 the claimant stated, "I did not receive a form when I was 65 inviting me to claim". The evidence as to whether the claimant was sent and received the invitation to which the insurance officer referred is conflicting. The balance of probabilities is, in my view, in favour of the conclusion that an invitation was received by her and was not accepted by her because of her mistaken belief as to her entitlement.

5. It has been repeatedly held that ignorance as to one's rights to claim a retirement pension does not of itself amount to good cause for delay in claiming as a claimant is expected to make appropriate enquiries as to her rights in this respect, or to cause them to be made on her behalf, for example at the local office of the Department of Health and Social Security. The claimant stated in her letter of 28 March 1977, "I never thought about making enquiries because I was certain I could not claim while I was working". Mr. Rowland has submitted that, "She knew that retirement was a condition of receiving benefit and did not know that a woman over 65 is deemed as a matter of law to be retired", and that "One may be expected to make enquiries about retirement pension when one reaches either pensionable age or

else retires. It is submitted that reaching the age of 65 is not an event which would necessarily cause the reasonable woman to think that she had anything about which to enquire".

6. I have considered all the evidence and the submissions with care and sympathy. I accept that the claimant deliberately refrained from claiming because she was "certain" that she was not entitled to a retirement pension. The reference she made in her statement of 25 March 1976 to "earnings above the limit" suggests that her subsequent assertions that she believed she was not entitled to a pension simply because she was working are inaccurate. Unfortunately, this is yet another case in which a claimant has chosen to make up her own mind as to her entitlement instead of seeking guidance. This is the least she should have done on receiving the invitation referred to in paragraph 4. It is what she should have been prompted to do in any event. Accordingly, I am satisfied that the existence of continuous good cause for her failure to claim before 25 March 1976 has not been established and that she is therefore disqualified for receiving the pension from 25 March 1975 to 24 December 1975 (both dates included). For the reasons I have given, my decisions are those set out in paragraph 1. I much regret having to come to these decisions as I have no doubt that the claimant is a most worthy and hard working lady. I wish to add that it was also most unfortunate that her failure to claim retirement pension did not come to light when she claimed sickness benefit in 1972 despite the fact that this claim was made by virtue of her own insurance.

7. Save in so far as the contrary is indicated, the claimant's appeal is disallowed.

(Signed) E. Roderic Bowen  
Commissioner  
12 December 1977

Commissioner's File: C.P.9/77  
C.I.O. File: I.O.1939/P/76  
Regional File: L.N. Unregistered Papers