

Retirement benefits — EC Directive 79/7  
Answer: Dismissed as not timely  
into A/C with Contributions Fee  
Dismissed

JBM/SH/1

Commissioner's File: CP/16/1993

SOCIAL SECURITY ACTS 1975 TO 1990

SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR RETIREMENT PENSION

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Shenstone Okari Roberts

Appeal Tribunal: Western

Case No: 2:20/14237

1. My decision is that the decision of the London social security appeal tribunal dated 16 November 1992 is not erroneous in point of law.

2. This is an appeal by the claimant to the Commissioner with the leave of the tribunal chairman granted at the tribunal dated as aforesaid against the decision of the appeal tribunal in respect of the decision of the adjudication officer first involved in these appeals.

3. The facts of the case are dealt with in box 5 of the written submission of the adjudication officer first involved in these appeals to the appeal tribunal. In respect of those matters and of the submission dated 29 March 1993 of the adjudication officer now involved in these appeals the claimant through his representatives has had the opportunity to comment and I have their observations dated 17 May 1993. Save as I do in this decision no useful purpose is to be served by my setting out those matters afresh here.

4. The relevant statutory provisions are Directive 79/7/EEC and as to British Domestic Law the Social Security (Contributions and Benefits) Act 1992, sections 49(3) and (4).

5. In my judgment the decision of the appeal tribunal is not erroneous in point of law. There is no dispute in regard to Domestic British Law and no useful purpose is to be served by my pursuing those issues here. I turn therefore to the provisions of Directive 79/7/EEC of the European Union. The claimant's appeal is in regard to the rate of retirement pension to which he is entitled, which, if based upon his own contributions, is only 44% of the standard rate. The claimant's contention is that

he should have his wife's contributions taken into account and that the refusal so to do contrary to Directive 79/7/EEC which in common parlance is known as the equal treatment directive. In the same situation a widow would be entitled to take into account her husband's contributions. The claimant's contention is that the benefit to which he is entitled is an Old Age pension and accordingly Article 3(1) of the above referred to Directive applies. Article 3.2 of the Directive provides that:-

" 2. This Directive shall not apply to the provisions concerning survivors benefits nor to those concerning family benefits, except in the case of family benefits granted by way of increases of benefit due in respect of the risks referred to in paragraph 1(a)."

The claimant's representatives in their observations referred to above dated 17 May 1993 contend:-

"[The claimant's] request to have his wife's contributions taken into account for the purpose of calculating his pension entitlement does not constitute an application for a survivors benefit under Article 3.2 of the Equal Treatment Directive. Rather, it constitutes an application for an enhancement of his own benefit entitlement which, we would maintain, is a substantially different thing.

This application does not fall outside the scope of the EC Directive, therefor."

I do not accept this argument. Survivors benefits is a general European term covering the whole range of benefits provided for in the European Union. In domestic law survivors benefits normally means the range of widow's benefits. However in my judgment sections 49(3) and (4) of the Social Security (Contributions and Benefits) Act 1992 provide entitlement to a Category B retirement pension for a widow are also survivors benefits. Accordingly these benefits are excluded from the scope of the EEC Directive. Provision of different benefits for widows and widowers is permissible.

6. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision.

7. Accordingly the claimant's appeal is disallowed.

(Signed) J B Morcom  
Commissioner

(Date) 21 July 1994