

CP 78/1983

DGR/BOS

SOCIAL SECURITY ACTS 1975 TO 1982

CLAIM FOR RETIREMENT PENSION

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Pearl Violet Cane (Mrs)

Local Tribunal: Colchester

Case No: 6/4

[ORAL HEARING]

1. My decision is as follows:

- (i) that retirement pension is not payable for any period prior to 6 September 1981 because the law does not allow a claimant to be treated as having retired from a date earlier than 12 months before the date on which notice of retirement was given, but
- (ii) that retirement pension is payable for the inclusive period from 6 September 1981 to 5 June 1982 because, notwithstanding that there was a delay in giving notice of retirement and making a claim, the claimant has nevertheless proved that there was continuous good cause for such delay, and all sums paid by way of increment and retained by the claimant shall be treated as having been paid on account of the retirement pension now awarded.

2. This is an appeal brought by the claimant against the decision of the local tribunal confirming the insurance officer's decision shown in box 1 of Form LT2, the necessary leave having been given by the tribunal chairman. The claimant asked for an oral hearing, a request to which I acceded. At that hearing the claimant was represented by Miss Lorna Findlay of the Child Poverty Action Group, and the insurance officer by Mr K A Turner of the Chief Insurance Officer's Office.

3. The claimant attained the age of 60 on 27 March 1981. However, she did not give notice of retirement or claim her pension until 6 September 1982. The insurance officer and the local tribunal appear to have proceeded on the basis that notice of retirement was given on 4 August 1982, but, as Mr Turner has rightly pointed out, only an oral request for a pension was made on 4 August 1982 and, whether or not this could be regarded as an actual claim, it certainly could not be treated as a notice of retirement, in that no date was then given as the date from which the claimant was to be treated as retired. In view of the fact that this point had not been taken until submissions were made to me by the insurance officer now concerned, I have hesitated

as to whether or not I ought to correct the date when the notice was given and the pension claimed. However, after some deliberation, I think that I cannot overlook the fact that the earliest date when notice was given of an actual retirement date is 6 September 1982, and that I must treat that as being the proper date of notice and the proper date of claim.

4. The combined effect of section 82(2)(c) of the Social Security Act 1975 and paragraph 4(3) of Schedule 2 to the Social Security (Claims and Payments) Regulations 1979 is to impose an absolute bar on payment of pension for any period more than 12 months prior to the date of the notice of retirement. Manifestly, then, there can be no question of the claimant being entitled to pension for any period prior to 6 September 1981.

5. A person cannot be treated as retired for the purposes of the Social Security Act 1975 earlier than 3 months before the date on which he or she gives notice of retirement, unless such person can prove that there was good cause for the delay throughout the period immediately preceding the said 3 months. Where good cause is proved, the prescribed time for giving notice is extended to the commencement of the continuous period of good cause. Accordingly, the real question at issue in this case is whether or not the claimant can establish good cause for the period from 6 September 1981 to 6 June 1982, the latter date being 3 months before the actual date of claim.

6. The claimant complains that, had the Department sent her some notification indicating that she was entitled in her own right to retirement pension at the age of 60, she would have given notice of retirement and claimed timeously. However, it appears that the notice was sent to a previous address of the claimant. But irrespective of this issue, there is, in any event, no statutory duty on the Department to send out the relevant notice; the obligation rests squarely on the claimant to give notice of retirement and to claim timeously.

7. The claimant's case is quite simply that her husband on her behalf made enquiry at the local office as to whether or not she was entitled to a pension in her own right, and was told specifically by an officer of the Department that she was not. In reliance on that information, she took no further action until about a year later when she happened to be listening to a radio programme dealing with entitlements under the Social Security legislation and for the first time entertained doubts as to the accuracy of the advice previously tendered. Thereupon she expeditiously gave notice and made her claim. Accordingly the question at issue is whether or not the claimant's husband was positively misled by an officer of the Department.

8. At the hearing before me Miss Findlay called the claimant to give evidence and, more important for this purpose, her husband. He explained clearly and in unequivocal terms that he put the point to a lady at the office that his wife had been paying contributions all her life, except for the last 5 years, and specifically asked the question whether or not she was entitled to a retirement pension in her own right. According to him, the answer was that she was not

so entitled and that she would have to wait until he attained the age of 65. I asked him whether he was quite certain that he had made the position absolutely clear to the lady, and he was adamant that he had. Miss Findlay contended that the claimant was entitled to take the view, as a result of her husband's communication to her of exactly what had happened, that she was in fact not entitled to her pension until her husband attained the age of 65. Miss Findlay argued that the belief was genuinely and reasonably held and that accordingly the claimant had established good cause for her delay in giving notice of retirement and claiming.

9. At the end of the day everything turns on whether or not the account given by the claimant's husband was accurate. I would say at this juncture that I have no doubt that in giving his evidence before me the husband was endeavouring to be absolutely honest. However, the difficulty is that often a witness is being absolutely honest, but still fails accurately to recollect exactly what transpired, particularly after a considerable lapse of time, and after a great deal of argument has ensued over exactly what did occur. Moreover, I have to bear in mind that it would be somewhat surprising if an experienced officer of the Department gave the erroneous advice alleged to have been forthcoming from the local office.

10. It is unfortunate in the extreme that it was not possible to identify the particular lady responsible for the alleged advice and for the claimant's representative to question her. However, the local manager has stated in the correspondence that identification was impossible. I understand this, but nevertheless it would have been helpful if the manager had been able to give some evidence, such as the experience or absence of it of the staff employed at the relevant time. Manifestly, if he had been able to say that the entire counter-staff had had the benefit of many years' experience of dealing with queries of the relevant nature, then considerable doubt would have been thrown on the version of the conversation alleged by the claimant's husband. However, no evidence of this sort has been put forward, and it may well be that at the relevant local office an inexperienced officer was being employed. I simply do not know.

11. This is a very difficult case. I am not surprised that the tribunal reached the conclusion that they did; the whole matter is very borderline. However, having heard and seen the claimant and her husband, I am satisfied on the balance of probability that the conversation alleged to have taken place between the claimant's husband and an officer at the local office did take place substantially in the form contended for by Miss Findlay, and that the mistaken view reached by the claimant's husband, and in due course by the claimant herself, was in the circumstances reasonable. Accordingly I am satisfied that the claimant has established continuous good cause for her lateness, and in consequence she is not to be disqualified for the relevant period.

12. I allow this appeal in part.

(Signed) D G Rice  
Commissioner

Date: 2 May 1984

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C I O File: I.O. 1041/P/83  
Region: London North