

CP 99/1981

JSW/AJ

SOCIAL SECURITY ACTS 1975 TO 1981

CLAIM FOR RETIREMENT PENSION

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name : Harold Alexander

Local Tribunal : Liverpool

Case No : 185/3

Pension No : 3582003L

Decision CP 2/82

1. My decision is that -

(a) retirement pension is not payable to the claimant for any period before 3 May 1978 because he cannot be treated as having retired from a date earlier than 12 months before the date on which notice of retirement was given as provided by paragraph 4(3) of Schedule 2 to the Social Security (Claims and Payments) Regulations 1975 and 1979;

(b) retirement pension is not payable for any period before 29 December 1978 because notice of retirement was given on 3 May 1979 and the claimant has not proved that there was good cause before 29 March 1979 for delay in giving such notice but has proved that there was good cause for the delay thereafter as provided by section 27(4) of the Social Security Act 1975 and paragraph 4(3) of the said Schedule.

2. The claimant attained pensionable age of 65 on 2 July 1977. He was self-employed and gave notice of retirement for that date on form BR1, dated 28 April 1979. The local insurance officer and local tribunal treated that as the date of the notice, although the form was not posted until enclosed with the letter from the claimant's accountants, dated 3 May 1979. Therefore, by section 79(6) of the said Act that is the date on which notice of retirement was given.

3. As regards the period before 3 May 1978, there is no power to extend the period for giving notice of retirement by reason of the statutory provisions. The claimant's accountants accepted this in paragraph 4 of their letter, dated 4 November 1980, and the present appeal is concerned only with the period within the 12 months, provided that good cause for the delay in giving notice is proved for extending the period to the commencement of any continuous period immediately preceding the prescribed period of three months before the notice was given.

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4. The claimant has stated that the reason for the delay is that he was unaware of his entitlement. It is well established that ignorance of entitlement to social security benefits and of the procedure for claiming does not of itself constitute "good cause" in terms of the regulations for delay in claiming or giving a requisite notice. It is not so much the ignorance as the failure to enquire which does not constitute "good cause". It appears from the claimant's reasons, dated 7 June 1979, that he was not unaware of the existence of a retirement pension but that, having regard to the earnings of his business and his outgoings and a mortgage, he - "... was not in a financial position to retire as the full state pension would have fallen far short of my fixed outgoings". In due course it was ascertained that his income was low enough to qualify for a pension.

5. The claimant's solicitors rely on the observations of MacKenna J in Eley v Bedford [1971] 3 WLR 563 at p 565 when, in dealing with the plaintiff's failure to claim social security benefits to which she might have been entitled, he said that - "A plaintiff who does not know that he has a right does not act unreasonably in failing to exercise it." The insurance officer dealing with the appeal to the Commissioner has referred to Decision R(S)1/73 in which the learned Commissioner commented on the judge's observations that - "The dictum is, with respect, in the nature of a generalisation. It is not, in my view, apposite in determining whether a person has good cause for delay in claiming national insurance benefit". I respectfully agree with his interpretation of the learned judge's dictum. My understanding of the learned judge's observations is that he was not dealing specifically with failing to claim benefits but with a plaintiff's obligation to mitigate damages, and a plaintiff who has a right that he does not know about is not acting unreasonably in regard to the obligation to mitigate in failing to exercise it.

6. Another reason submitted for the delay is that the claimant apparently did not receive a form, which is usually sent to persons whose addresses are known shortly before they reach pensionable age, drawing attention to their contingent entitlement to a retirement pension. The claimant had changed his address some years previously and evidently the change of address had not been recorded by the Department of Health and Social Security. There is no obligation, statutory or otherwise, requiring the Department to issue the form and the general principle applies that a benefit must be claimed and that it is the responsibility of the individual to ascertain entitlement and to make a claim. Social security benefits, including retirement pension, are personal benefits and there are local social security offices at which enquiry may be made and advice sought. Leaflets are also obtainable dealing with every type of social security benefit of which retirement pension is one.

7. The claimant was represented at the hearing of his appeal by the local tribunal by a member of the firm of chartered accountants dealing with his financial affairs. Copies of the profit and loss account for

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the claimant's business to year ended 31 August 1978 are included in the case papers. The claimant's representative dealt in some detail with events following the giving of notice of retirement and the claimant's solicitors now dealing with the appeal to the Commissioner rely on the claimant having received no notification of the insurance officer's decision of 28 November 1979 until it was handed to his accountant on 29 October 1980. Deplorable though the events as detailed are, they have no bearing on the reasons for the delay in claiming since they occurred after notice of retirement had been given. They do not affect the pension which presumably has been in payment (subject to earnings) since 28 January 1979.

8. On 29 March 1979 the claimant enquired at a social security office about a retirement pension. On 17 April it was established that he satisfied the contribution conditions for a retirement pension and he was sent a claim form. I appreciate that enquiry has to be made and steps taken as to contributions but, since the claimant had done all that was open to him on 29 March, in my judgment, there was continuous good cause for the delay to and including 3 May 1979. The prescribed period for giving notice is therefore extended to 29 December 1978. Prior to 29 March, I find that the claimant has not proved that there was good cause for the delay in claiming throughout the period and there is no valid ground for reversing the unanimous decision of the local tribunal.

9. To the extent stated, the claimant's appeal is allowed but is otherwise dismissed.

(Signed) J S Watson
Commissioner

Date : 27 April 1982

Commissioner's File : C.P./99/1981
C I O File : I.O. 1047/P/81
Region : Merseyside