

Bulletin 168

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THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case No: CP/216/2001

APPEAL FROM A DECISION OF AN APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Deputy Commissioner David Teagle

Claimant:

Benefit:

Increase of Retirement Pension

Original Decision:

12.10.1999

Tribunal:

Stockport

Tribunal Case Ref:

U/40/125/2000/00164

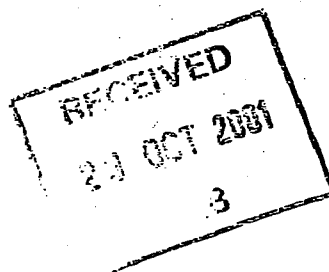
Tribunal decision:

20.06.2000

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**Decision:**

I allow this appeal by the Secretary of State against the decision of the Stockport tribunal made on the 20<sup>th</sup> June 2000.

For the reasons given below, the decision of the tribunal is erroneous in law and I set it aside. All the relevant facts and circumstances relating to this appeal are before me and accordingly I use my power under the Social Security Act 1998, S14(8)(a)(ii) to substitute my decision for that of the tribunal. My decision is as follows:

The original decision of the Secretary of State dated 12.10.99 is confirmed.

**Background:**

The claimant was awarded retirement pension from 08.11.93. On 03.08.1999 the Benefits Agency received an application for increase in retirement pension for his dependant wife. The claim form had been dispatched on 23.07.1997 in response to a telephone request. It is not clear if the form received was that sent out originally or a replacement requested later. In any event it is clear that having completed Pt 8 of the original pension claim form, the claimant failed to pursue the issue for about two years.

The increase was awarded from 03.05.1999 following receipt of the application on 03.08.1999, which was accepted as the date of claim. No increase was awarded for the period 08.11.93 to 02.05.1999 because this was more than three months before the date of claim.

**The appeal to the tribunal:**

The claimant appealed to a tribunal in respect of the date from which the increase was paid. At the hearing he produced a copy of his original retirement pension claim form. The Benefits Agency had long since destroyed its copy under its standard destruction policy.

This document was accepted as a true copy of the original. At 13G, Part 8 in the form, the claimant had ticked the box indicating a wish to claim extra money for his spouse. The note to the form indicates that by ticking the box there will be sent out for completion a form for claiming the extra.

The tribunal upheld the appeal relying on the failure, as by inference found, of the Benefits Agency to issue a form to claim the increase as a response to receipt of the original retirement pension claim form with part 8 completed. It concluded the Pension Directorate should adjudicate upon the claim for an increase from the date of the award of retirement pension to the claimant.

**The appeal to the Commissioner:**

The Secretary of State appealed on the grounds that the claimant had not made an application for an increase on a form provided by the Secretary of State and in accordance with Social Security (Claims and Payments) Regs 1987, Reg 4(1) prior to 03.08.1999 and that the increase could not be paid for any period earlier than three months before the date of claim.

**Conclusion:**

The issue before the tribunal was in the first place to determine the date upon which a valid claim for an increase of retirement pension had been received and if not contemporaneous with the original claim for retirement pension to determine the extent, if any, to which the date to which the claim could be 'backdated'.

The tribunal appears to have accepted that no form for claiming the increase was issued in response to the completion of Part 8 in the original form but then failed to address the provisions of Claims and Payments Regulations, Reg 2(3), Reg 4(1) and Reg 4(7). This was in error of law and accordingly I set aside the decision of the tribunal. It was not clear from the decision whether the tribunal had concluded that a valid application had been made by completion of Part 8 in the original form or that the claim was validly made on 03.08.1999 and should be 'backdated' to the date of the claimant's original claim.

There is no material dispute as to the facts and so I am able to substitute my decision for that of the tribunal and this is to uphold the original decision of the Secretary of State.

The law is clear, a claim for an increase in benefit is a claim in its own right, Reg 2(3), and the requirements for submission of such a claim are as set out at Claims and Payments Reg 4(1). The date of claim is that date the form is received by the Benefits Agency. Reg 6(1).

Part 8 in the original form is a trigger to the issue of a claim form and no more. Completion of that section does not of itself found a claim. Failure by the Benefits Agency to act upon that request does not turn it into a claim under Reg 4(1).

Having regard to the provisions of the Claims and Payments Regulations referred to above I am satisfied that no valid claim form was received prior to 03.08.1999 and that payment of the increase has been backdated for the maximum period the law permitted at that time, 3 months. I have no power to extend that period.

15<sup>th</sup> October 2001

David Teagle  
Deputy Commissioner