

DGR/BDS

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL
ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

copy of Social Security Act 1976 - full name copy

Decision C.S.B. 15/82

1. For the reasons set out below the decision of the supplementary benefit appeal tribunal dated 5 August 1981 is erroneous in point of law, and accordingly I set it aside. Furthermore, being satisfied that it is expedient in the circumstances that I give the decision the tribunal should have given, I further decide in accordance with rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980, as amended by rule 6(2) of the Supplementary Benefit and Family Income Supplements (Appeals) Amendment Rules 1982 that the claimant is entitled to supplementary benefit from 5 January 1981.

2. In September 1980 the claimant enrolled as a full-time student on the Earth and Life Studies degree course held at the Derby Lonsdale College of Higher Education. The first year included classes in Biology, Geology and "The Physical Environment and Life". The course was of three years' duration in all, and was up to the normal standard of an honours degree of any British University or College. The claimant claimed supplementary allowance from 5 January 1981, but the benefit officer decided that the claimant was a full-time student within regulation 8(1)(a) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1980 [S.I. 1980 No. 1586] and disallowed the claim.

3. Thereupon the claimant appealed to the supplementary benefit appeal tribunal, who unanimously reversed the benefit officer. The findings of the tribunal were as follows:-

"[The claimant] is an unemployed shift chemist, who has been in this country since 1956 and obtained a BSc in Chemistry in 1973. He was attending the Lonsdale College during the academic year 1980-81 carrying out a degree course in biology, geology

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(relevant to chemistry) and during this time applied for numerous jobs and is therefore available for full-time employment.

In [the claimant's] case the tribunal considered that the course should not be classed as full-time as he already had a BSc."

The reasons for the tribunal's decision were as follows -

"The Tribunal consider in this case regulation 8(1)(a) of the Entitlement Reg. did not apply. They therefore consider that [the claimant] was to be treated as available for employment under Reg. 7(2)(a)(b) and (c)."

On 29 October 1981 the benefit officer sought leave to appeal on a question of law against the decision of the tribunal, and such leave was given. Thereupon the claimant asked for an oral hearing of the appeal, a request to which I acceded. At that hearing the supplementary benefit officer was represented by Miss L Shuker of the Solicitor's Office of the Department of Health and Social Security and the claimant appeared in person.

4. Section 5 of the Supplementary Benefits Act 1976 provides as follows:

"Except in prescribed cases the right of any person to a supplementary allowance shall be subject to the condition that he is registered for employment in such manner as may be prescribed and is available for employment; and regulations may make provision as to -

- (a) what is and is not to be treated as employment for the purposes of this section; and
- (b) the circumstances in which a person is or is not to be treated for those purposes as available for employment".

5. Until 2 February 1981 the relevant regulations were the Supplementary Benefit (Conditions of Entitlement) Regulations 1980 in their original form. These were amended by the Supplementary Benefit (Conditions of Entitlement) Amendment Regulations [S.I. 1981 No. 99] and by the Supplementary Benefit (Miscellaneous Amendments) Regulations 1981 [S.I. 1981 No. 815] which came into effect on 2 February 1981 and 27 July 1981 respectively. They have since 23 November 1981 been replaced by the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 [S.I. 1981 No. 1526]. The provisions which are material to this appeal have not undergone any substantive change since the time they originally came into being and their amendment and eventual replacement have arisen out of the legislature's wish to improve the language in which such provisions are couched. Accordingly, for simplicity and to enable benefit officers, claimants and appeal tribunals the more easily to understand the position, I will cite the regulations as they are currently enacted.

6. Regulation 7 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 reads as follows:

- "7.- (1) Subject to regulation 8, a claimant shall be treated as available for employment if he is available to be employed within the meaning of section 17(1)(a)(i) of the Social Security Act (available to be employed for purposes of unemployment benefit) or regulations made under it, or if he is a person to whom paragraph (2) applies.
- (2) A claimant who is attending for not more than 21 hours a week a course of education at an establishment recognised by the Secretary of State as being, or as comparable to, a college or school or a course of training or instruction analogous to a course for which a training allowance would be payable shall be treated as available for employment, notwithstanding the said section 17(1)(a)(i), if -
- (a) he is prepared to terminate the course immediately a suitable vacancy becomes available to him;
 - (b) he has not terminated an employment or a course of education which was for more than 21 hours a week for the purpose of attending the course; and
 - (c) either he is aged less than 21 or, in the period immediately preceding the commencement of the course, he was in receipt of an allowance and had been registered and available for employment for not less than 12 months pursuant to section 5."

Regulation 8 of the Regulations, insofar as it is relevant, provides as follows:

- "(1) A claimant shall not be treated as available for employment if he is a person to whom one or more of the following sub-paragraphs apply:-
- (a) he is a student"

7. Miss Shuker contended that the decision of the tribunal was erroneous in point of law on two grounds. First, on the evidence the claimant was clearly a full-time student falling within regulation 8(1)(a) and was therefore not entitled to supplementary benefit. Any contrary conclusion flew in the face of the evidence, and no tribunal acting judicially and properly instructed as to the law could have decided otherwise than that the claimant was caught by regulation 8(1)(a). Her second ground for contending that the tribunal's decision was erroneous in point of law was that the claimant did not satisfy regulation 7(2)(c).

8. As regards her first submission, Miss Shuker contended that a letter signed by the director of the Derby Lonsdale College of Higher Education informing the Department that the claimant had entered on a full-time course during the academic year September 1980 to July 1981 brought the claimant conclusively within regulation 8(1)(a) and any finding to the contrary must be perverse. However, the difficulty that faced Miss Shuker in this submission was that any allegation that the tribunal had reached a conclusion, which could not be supported on the evidence, was that she had to recite all the evidence put before the tribunal, and not merely select part of it. In other words, it was not enough simply to point to the letter from the director of the college, however important that letter might be. She had also to demonstrate that the other evidence given at the hearing did not cause that letter to appear in a totally different light. This, in my judgment, she failed to do.

9. In the present case it so happens that the claimant was able himself to make good the lack of proper records, in that he recounted to me all that he had submitted to the tribunal. I have no reason to doubt the accuracy of his recollection of what was said, and certainly Miss Shuker was in no position to gainsay him. Briefly, the claimant's evidence, as given to the tribunal, appears to have been as follows. He came to this country in 1956 and did his national service. He became a second lieutenant, and after leaving the army in 1968, undertook various jobs until 1970 when he went up to York University. He was there for three years, and took a degree in chemistry. Thereafter he obtained an appointment as a shift chemist at British Celanese. Unfortunately, in 1980 he was made redundant. He registered for employment and sought it energetically, and the insurance officer accepted that he was available for work. (From the amount of correspondence which the claimant showed me it is quite clear that he did his utmost to find employment). In the course of seeking work he got the impression that it would be advantageous if he acquired some knowledge of geology, and rather than sit about doing nothing he entered on the first year of a three year degree course at the Derby Lonsdale College of Higher Education. However, he was ready to abandon the course and take up employment if only he could find it. His predominant concern was with obtaining work, and he really only attended the course so as to do something useful in the intervening period. His occupation was not that of a full-time student. He was an unemployed chemist looking for work but using his periods of enforced inactivity to acquire further knowledge so as to be the better equipped to obtain employment. In the event, he completed the first year of the course which was of particular value to him, in that it included geology. It is an interesting feature of this case that the claimant himself paid more than £800 in order to be able to attend the course.

10. It is quite clear from the findings of the tribunal and from their decision that they did not regard the claimant as being a full-time student. Their reference to regulation 7(2)(a), (b) and (c) shows that they regarded him as studying part-time and they reached this conclusion notwithstanding the letter from the director of the college. They appear to have taken a broad view of the position, noting in particular the claimant's availability for work. Doubtless they had regard for his numerous applications for employment.

11. At this stage it is perhaps helpful if I say what I consider to be the law. Except in prescribed cases, a person is not entitled to supplementary benefit unless he is registered and available for employment, (section 5 of the Supplementary Benefits Act 1976). However, he will not be treated as available for employment, if he is a student, and what is a student is defined in regulation 2 as meaning -

"A person under pensionable age who has left school and is attending a course of full-time education ..."

A part-time student will fall within regulation 7(2) if he can satisfy all the provisions there set out, but if he cannot, he will come within regulation 7(1). In the latter case his entitlement to supplementary benefit will depend upon his availability for employment for purposes of unemployment benefit.

12. Now, applying the law to the facts of the present case, there can be no doubt that, if the claimant was during the relevant period a full-time student, he is caught by regulation 8(1)(a), and there can be no question of his having title to supplementary benefit. In my judgment, whether or not a person is a student, as defined in regulation 2, is essentially a question of fact. I am only concerned with matters of law. The appeal tribunal decided that the claimant was not a full-time student and was not therefore caught by regulation 8(1)(a). Miss Shuker contends that the tribunal had no evidence on which to come to this conclusion. On the contrary, I think they had. It is not enough merely to look at the letter from the director of the college. It is necessary to consider all the evidence that was given before the tribunal. In my judgment, it is not possible to say that the tribunal could not reasonably have come to the conclusion that they did. This is a most remarkable case, and the circumstances are most unusual. Whether or not I would have come to the same conclusion as the tribunal, I do not think that I can say that their decision was on the evidence perverse.

13. However, that is not the end of the matter. For the tribunal went on to say that the claimant fell within regulation 7(2) and that he satisfied sub-paragraphs (a), (b) and (c). Miss Shuker contended that on no footing did he satisfy sub-paragraph (c). The claimant who was over 21, had on the facts been unemployed for less than 12 months at the commencement of the period of the claim, and manifestly he could not satisfy sub-paragraph (c). Accordingly, if he was not caught by regulation 8(1)(a), he fell within regulation 7(1), provided, of course, he was available to be employed within the meaning of section 17(1)(a)(i) - he was undoubtedly registered for employment -, and on the facts of this case it is not in dispute that the insurance officer did regard him as available for employment. It follows from this that the tribunal, in deciding that the claimant was not caught by regulation 8(1)(a), should have gone on to say that he fell within regulation 7(1). On the basis that the claimant was not a full-time student, they rightly reached the decision that he was entitled to supplementary benefit from 5 January 1981, but the reasons for their decision were erroneous.

14. Accordingly, I must set aside their decision because the reasons given for it are erroneous in point of law. However, by virtue of

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rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980, as amended by regulation 6(2) of the Supplementary Benefit and Family Income Supplements (Appeals) Amendment Rules 1982, I am at liberty, if I am satisfied that it is expedient in the circumstances so to do, to give the decision that the tribunal should have given. The tribunal should have decided that the claimant fell within regulation 7(1) and that he satisfied section 5 of the Supplementary Benefits Act 1976. He was accordingly entitled to supplementary allowance from 5 January 1981.

15. I allow this appeal. I set aside the decision of the tribunal and give the decision that the tribunal should on their interpretation of the facts have themselves given.

(Signed) D G Rice
Commissioner

Date: 28 April 1982

Commissioner's File: CSB/649/1981
C SBO File: SBO 858/81