

Back dating SB

defined

Good cause

Reasonably practicable

Decision CSB/748/1981

This case has been starred because it is, I understand, the first reasoned decision to consider the meaning of "good cause" and "reasonably practicable" in the Supplementary Benefit (Claims and Payments) Regulations

V G H HALLETT

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VGHH/OG

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the Supplementary Benefit Appeal Tribunal dated 23 September 1981 is erroneous in point of law. I set it aside and refer the case to another tribunal for determination in accordance with my directions (rule 10(8)(a)(ii) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 /S.I. 1980 No 1605/ as amended by the Supplementary Benefit and Family Income Supplementmnts (Appeals) Amendment Rules 1982 /S.I. 1982 No 40/)
2. This is an appeal by a supplementary benefit officer on a point of law against the decision of a Supplementary Benefit Appeal Tribunal on 23 September 1981 that the claimant was entitled to supplementary benefit from 4 July 1981 having shown good cause, in terms of regulation 5(2)(a) of the Supplementary Benefit (Claims and Payments) Regulations 1980 /S.I.1980 No 1579/ (which I shall call "the 1980 Claims and Payments Regulations") to backdate his claim made on 20 July 1981 to the date that he registered for work, namely 29 June 1981.
3. I granted leave to appeal against the decision of 23 September 1981 and held an oral hearing of the appeal. The supplementary benefit officer was represented by Mr P Milledge of the Solicitor's Office, Department of Health and Social Security. The claimant did not appear and was not represented.
4. According to the written submission made by the supplementary benefit officer to the tribunal, the appellant is a 20 year old married man who lives with his wife in his parent's household. He had registered for employment at T/.../ Unemployment Office since 29 June 1981 following completion of a Training Opportunity Programme's Course at W/.../ Technical College. A claim for supplementary allowance, on a form B1, was completed at T/.../ Unemployment Benefit Office on 20 July 1981. The claimant was interviewed regarding his claim on 22 July 1981 and supplementary allowance was paid to the appellant from the prescribed pay day, Saturday, in the week commencing 20 July 1981.

5. The decision of the supplementary benefit officer awarding supplementary allowance of £36.75 from the prescribed pay day Saturday in the week commencing 20 July 1981 was issued on 23 July 1981. The claimant appealed against this decision, complaining that he registered his name on 29 June 1981, that he was not paid until 25 July 1981 and asking for a genuine reason for not paying his back-dated claim.

Supplementary Benefit Appeal Tribunal proceedings

6. The chairman's signed note of evidence is as follows:

"Applt stated that he went to the Job Centre on 29 6 81 and signed unemployed, he next registered on 13 7 81. He complained that Job Centre did not tell him to claim Supp Ben independently of his claim for UB and because of this he was under impression that his claim was taken and was being processed."

7. The facts found, decision and reasons for the decision of the Tribunal are set out on form LT235. The facts found were:

"The appellant registered unemployed on 29 6 81 and was under the impression that by doing so he was making a claim for supplementary benefit, for this reason he did not pursue his claim assuming the delay as normal."

The Tribunal decision was:

"The SBO's decision is revised. The appellant is entitled to supplementary benefit of £36.75 from week commencing 4 7 81."

The Tribunal's reasons were:

"The Tribunal accepted that the appellant was under the impression that he had made a claim for supplementary benefit. This is considered to be sufficient good cause to backdate the claim to the date he registered for work - under reg 5(2)(a) of the Claims and Payments Regulations 1980."

The relevant regulations

8. The 1980 Claims and Payments Regulations came into operation on 24 November 1980 and continued in force until they were replaced by the Supplementary Benefit (Claims and Payments) Regulations 1981 /S.I. 1981 No 1525/ (which I shall call "the 1981 Claims and Payments Regulations") which came into operation on 23 November 1981. Apart from some re-numbering, the insertion in 3(2)(a) of the words "and be available for" before "employment", and the addition of the words "unless in any case or class of cases the Secretary of State directs that sub-paragraph (b) shall apply" at the end of regulation 3(2)(a), the wording of the provisions of the 1980 Claims and Payments Regulations quoted below are reproduced in the 1981 Claims and Payments Regulations. The relevant provisions of the 1980 Claims and Payments Regulations are as follows:

1(2) In these regulations, unless the context otherwise requires -
"the Act" means the Supplementary Benefits Act 1976;

.....

"benefit" means supplementary benefit;

.....

"claimant" means a claimant for benefit;

.....

"The Department" means the Department of Health and Social Security;

.....

(3)

(4)

Manner in which claims are to be made

3. - (1) Every claim for benefit shall be made in writing to the Secretary of State either -

(a) on a form approved for the purpose by him and supplied without charge by such persons as he may appoint or authorise for the purpose;
or

(b) in such manner as he may accept as sufficient in the circumstances of any particular case or class of cases.

(2) A claim for benefit -

(a) in the case of a claim for an allowance by a claimant required to register for employment pursuant to section 5, shall be delivered or sent (for forwarding to an office of the Department) to the relevant unemployment benefit office;

(b) in any other case, shall be delivered or sent to an office of the Department.

(3) The date on which a claim for benefit is made shall be -

(a) in a case to which paragraph (2)(a) applies, the date on which it is received at the relevant unemployment benefit office;

(b) in any other case, the date on which it is received at an office of the Department.

(4)

(5)

Information to be given in connexion with claims

4. Every person who makes a claim for benefit shall furnish such certificates, documents, information and evidence for the purpose of determining the claim as may be required by the Secretary of State and, if reasonably so required, shall for that purpose attend at any office or place as the Secretary of State may direct.

Time for claiming pension or allowance

5. - (1) Subject to paragraph (2), a claim for a pension or allowance shall be made no later than the first day of the period in respect of which it is made.

(2) Where a claim for a pension or allowance is made in respect of a period earlier than the day on which it is made, it shall be treated as if it had been made -

(a) where in any case the claimant proves that throughout that period there was good cause for failure to make the claim before the day on which it was made, on the first day of that period;

(b) where -

(i) the claimant has, in respect of that period, made a claim for benefit under the Social Security Act or and

(ii) his claim for a pension or allowance is made as soon as reasonably practicable after his receipt of the decision in respect of his claim for that benefit, on the day on which the claim for that benefit, was made;

(c)

(d)

9. Mr Milledge told me that the approved form for claiming supplementary benefit in the present case was form B1 and that the claim ought, in the case of a claimant required to register for employment, to be delivered or sent to the unemployment benefit office, not the Department of Health and Social Security: see regulation 3(1)(a) and 3(2)(a) of the 1980 Claims and Payments Regulations.

Questions arising in this appeal

10. Five questions arise in this appeal. First, what is meant by "good cause" in the regulations? Secondly, did the Supplementary Benefit Appeal Tribunal apply the correct test? If they did not, their decision must be erroneous in point of law. Thirdly, if erroneous, is it expedient to give the decision which they should have given or must the case be referred back to another tribunal? Fourthly, if "good cause" has not been shown, can the claimant nevertheless back-date his claim for supplementary benefit to the date of his claim for unemployment benefit on the ground that he made his claim for supplementary benefit "as soon as reasonably practicable" after receipt of the decision on unemployment benefit? Fifthly, what does "as soon as reasonably practicable" mean?

"Good cause"

11. In my judgment, the expression "good cause" in regulation 5(2)(a) of the 1980 (and 1981) Claims and Payments Regulations has the same meaning as in the regulations relating to claims and **payments for**

national insurance benefit (see for example regulation 14(2) of the Social Security (Claims and Payments) Regulations 1979 /S.I. 1979 No 628/, replacing earlier regulations using that expression). The 1980 Claims and Payments Regulations replaced, with effect from 24 November 1980, the Supplementary Benefits (Claims and Payments) Regulations 1977 /S.I. 1977 No 1142/, which had allowed back-dating of a claim for supplementary benefit in "exceptional circumstances". The substitution in the 1980 Claims and Payments Regulations of references to "good cause", instead of "exceptional circumstances" at the same time as the Social Security Commissioners, who have given many reported decisions on the meaning of "good cause" in national insurance matters, acquired jurisdiction in supplementary benefit matters, points clearly to this conclusion, which is re-inforced by wording, throughout the 1980 Claims and Payments Regulations, which echoes (allowing for necessary differences) the national insurance provisions relating to late claims and payments. The case law developed in connection with such late claims sets out principles which are, accordingly, also applicable to the "back-dating" of supplementary benefit claims.

12. (1) In Decision C.S. 371/49 (reported), the Commissioner said

"'Good cause' means, in my opinion, some fact which, having regard to all the circumstances (including the claimant's state of health and the information which he had received and that which he might have obtained), would probably have caused a reasonable person of his age and experience to act (or fail to act) as the claimant did".

That description of good cause has been quoted and applied in numerous cases before the Commissioner and was expressly approved by a Tribunal of Commissioners in Decision R(S) 2/63. The Tribunal went on to say (paragraph 13)

"Ignorance of one's rights is not of itself good cause for delay in claiming. It is in general the duty of the claimant to find out what they are, and how and when they should be asserted /but/ The Commissioner has long recognized a wide variety of circumstances, in which it would not be expected that a reasonable person would make inquiries or think that there was anything to inquire about" "

(2) The principle that a person's ignorance of his rights - or of the time limits for claiming - is not of itself good cause for a late claim invite a further enquiry, namely whether there are facts leading to a conclusion that the claimant's ignorance was reasonable see Commissioner's Decision R(P) 1/79 at paragraph 5. In considering whether a person whom it is accepted was ignorant of his rights - or ignorant of a time limit for claiming benefit - could not reasonably have been expected to be aware of them, so as to constitute good cause for the delay in claiming, the first question that should be asked is whether the claimant made any enquiries as to the position at the local, or any other, office of the Department of Health and Social Security or of the unemployment benefit

office and, if he has not done so, whether he could reasonably have been expected to make such enquiries: see Commissioner's Decision R(S) 8/81 at paragraph 11.

- (3) There can be good cause for delay if the delay was due to a mistaken belief reasonably held: see Decisions R(P) 1/79 and R(S)8/81. This principle has been frequently applied by the Commissioner in cases where the claimant has made no enquiries but the circumstances have been such that the Commissioner has held that there was nothing about which the claimant could reasonably have been expected to enquire: see paragraph 9 of the last mentioned decision, for examples.

Did the Supplementary Benefit Appeal Tribunal apply the correct test?

13. No. Their decision was clearly erroneous in point of law, for in giving their reasons they stated that the claimant was under the impression that he had made a claim for supplementary benefit and that this was considered to be sufficient good cause. They did not consider whether it was reasonable to be under that impression. The first question that they should have asked, once they had found that the claimant was under the impression that he had made a claim for supplementary benefit was whether that erroneous belief was reasonably held. In order to arrive at an answer to this question, they should have found the facts on which such a belief or impression was based. Had anything been said to the claimant at the Unemployment Benefit Office to lead him to believe that no separate claim for supplementary benefit was necessary? If so, was it said by an official or by someone else? What forms did the claimant complete at that Office? Did any form completed by the claimant, or any leaflet handed to him, lead him to believe that his claim for unemployment benefit was also a claim for supplementary benefit.

14. The tribunal should also have asked why the claimant, assuming that he was ignorant of the procedure for making a claim for supplementary benefit, made no enquiries as to the procedure while at the Unemployment Benefit Office? If, **however, he did make enquiries, what does** say he was advised? Had he ever claimed supplementary benefit before? A finding as to this (I was informed at the oral hearing before me that in fact the answer to this question is "Yes") should have been made by the appeal tribunal. If he had not claimed supplementary benefit before, did he make no enquiry as to the procedure and if not why not? If he had claimed supplementary benefit before, what procedure was then adopted and was he at the same time claiming unemployment benefit? If he was not, what was his reason for assuming that a claim for unemployment benefit also operated as a claim for supplementary benefit? What form did the claimant fill in when he previously claimed benefit? Was it form B1, the usual form and, if it was, why did the claimant assume that he did not have to fill in another form B1?

Is it expedient to give the decision the Tribunal should have given?

15. The answer to this question must be "No". The facts found by the Tribunal do not enable me to come to any conclusion as to whether the impression of the claimant that he had already made a claim for supplementary benefit was or was not reasonably held. The Commissioner

is only empowered to give, when expedient, the decision that the Tribunal should have given. He has no power to conduct a complete re-hearing, or to find new facts. Accordingly, the case must be referred back to another Tribunal in order that the necessary enquiries (as to which see paragraphs 13 and 14 above) can be made and facts found on which to base a conclusion and the Tribunal should then decide whether or not the claimant's impression or belief was reasonably held, applying the principles set out above.

Back-dating the supplementary benefit claim to the date of the unemployment benefit claim

16. It is open to a claimant who wishes to "back-date" his claim for supplementary benefit to a date earlier than that on which it was in fact made to avail himself of any of the grounds set out in regulation 5 of the 1980 Claims and Payments Regulations (or, after 23 November 1981, the 1981 Claims and Payments Regulations): see paragraph 8 above for the terms of regulation 5, so far as relevant to this appeal. If the claimant falls within paragraph (a) of regulation 5(2) and establishes "good cause" (the onus for which is on him, adopting a civil standard of proof i.e. the balance of probability) for a period stretching continuously back at least as far as the date of the claim for unemployment benefit, paragraph (b) will not **require consideration**. **But if he does not show** such "good cause", the claimant may be able to rely on paragraph (b). Under that paragraph, a claimant for benefit under (among other provisions) the Social Security Act 1975, if he makes his claim for supplementary benefit "as soon as reasonably practicable" after his receipt of the decision in respect of his claim for the first mentioned benefit, the claim for supplementary benefit is to be treated as having been made on the day on which the claim for that benefit was made. The Supplementary Benefit Appeal Tribunal, if the claimant fails to establish good cause at least back to the date of the claim for unemployment benefit, should consider whether paragraph (b) assists the claimant. In applying this paragraph, the first question to be asked by the tribunal is when was the decision awarding the claimant unemployment benefit in respect of his claim made on 29 June 1981 actually received by the claimant? The second question is "Did the claimant complete a claim for supplementary benefit as soon as reasonably practicable after such receipt?" If the answer to this second question is "Yes" then the claim for supplementary benefit may be back-dated to the date of the claim for unemployment benefit.

Meaning of "as soon as reasonably practicable"

17. In my judgment, the expression "reasonably practicable" in the context of regulation 5(2)(b) of the 1980 (and 1981) Claims and Payments Regulations has a similar meaning to that attributed to that expression by the Court of Appeal in Wall's Meat Co Ltd v Khan /1979/ I.C.R. 52. The Court in that appeal was concerned with the interpretation of paragraph 21(4) of Schedule 1 of the Trade Union and Labour Relations Act 1974 under which an industrial tribunal is directed not to consider a complaint of unfair dismissal unless it is presented within a 3 months period "or within such further period as the tribunal consider reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the period of three months". The claimant in that case was dismissed by his employers. He went to the labour exchange to get his unemployment

pay and was told that he would not get it for 6 weeks but that it would go to a tribunal. He thought this referred to his dismissal by the company. The claimant did not know the difference between the national insurance local tribunal and the industrial tribunal. He thought that there was just one tribunal which would deal with his claim. He "was under the impression that the reference to the local national insurance tribunal meant that he did not have to make a separate claim for unfair dismissal through an industrial tribunal". The industrial tribunal found that it was not reasonably practicable in these circumstances for the claimant to have presented his claim for unfair dismissal within the 3 months period. This decision was affirmed by the Employment Appeal Tribunal and their decision was affirmed by the Court of Appeal. That Court held that the claimant reasonably did not know the proper method of enforcement of his right and the industrial tribunal could not be said to have erred. Lord Justice Brandon (as he then was) at page 61 letter B considered that while a claimant was reasonably ignorant of either (a) his right to make a complaint of unfair dismissal at all or (b) how to make it or (c) that it was necessary to make it within a 3 months time limit, it was not reasonably practicable for him to present his complaint within the time limit concerned. He continued (paragraph E) that if a man does know of the existence of the right to claim, it may in many cases at least, though not necessarily all, be difficult for him to satisfy an industrial tribunal that he behaved reasonably in not making such enquiries. These remarks seem to me to be equally applicable to a supplementary benefit appeal tribunal when considering how soon, after receipt of a decision relating to the claim for unemployment benefit, it is reasonably practicable to make a claim for supplementary benefit. If the claimant, however, does make enquiries but is insufficiently advised by someone who is competent to give him advice, good cause may be shown: see Commissioner's Decision R(U) 3/60. Whether the advice given was or was not insufficient will depend on the exact facts and circumstances, of each case.

18. My decision is set out in paragraph 1.

(Signed) V G H Hallett
Commissioner

Date: 24 September 1982

Commissioner's File: C.S.B./748/1981
C SBO File: 1045/81