Late claim - backdating. - 3 weeks "grace" for return of completed B1

JM/SH/8/MD

Commissioner's File: CSB/900/1985
C A O File: AO 2849/85
Region: London North

SUPPLEMENTARY BENEFITS ACT 1976
APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. This is a claimant's appeal, brought by my leave, against a decision of the supplementary benefit appeal tribunal dated 20 May 1983 which confirmed a decision issued by the supplementary benefit officer (now the adjudication officer) on 22 January 1983. I held an oral hearing of the appeal. The claimant attended and presented his own case. The adjudication officer's case was presented - with the customary lucidity and objectivity - by Mr E O F Stocker. The basic facts are simple enough - although the manner in which they were approached by the erstwhile benefit officer is somewhat more complex.

2. At the material time the claimant had been unemployed since July 1982. He appears thereafter to have been in receipt of supplementary allowance, subject to the condition that he be available for employment pursuant to section 5 of the Supplementary Benefits Act 1976. The papers indicate that on 8 December 1982 he failed to make himself available for employment and that, in consequence, his supplementary allowance terminated on 9 December 1982. It appears that he thereafter resumed "signing on". At any rate it is beyond doubt that on 20 December 1982 his local unemployment benefit office issued him with form B1 and that the completed form B1 was not received (presumably by the local supplementary benefit office) until 20 January 1983.

3. It is here that the plot begins to thicken. It must already be obvious to anyone who has read thus far in this decision that the claimant intended to claim supplementary allowance from - at the latest - the date (20 December 1982) when he sought and obtained the claim form from the unemployment benefit office. But that would not necessarily, of course, be - and in this case was not - in any way obvious to the local benefit officer whose duty it was to peruse and adjudicate upon the claim represented by that form. He gave no thought to backdating. His decision, as issued on 22 January 1983, read:

> "Supplementary allowance of £39.13 determined weekly and paid fortnightly from the prescribed payday Friday in week commencing 17.1.83."

4. In Decision R(SB)56/83 I said this:

"The whole issue is bedevilled by the fact that, so far as I can ascertain, it is not, and never has been, the practice of the Department to encourage a claimant for supplementary benefit to specify the date from which he intends his claim to run. In the national insurance field many of the claim forms specifically request information directed to the establishment of such date. Not so in the field of supplementary benefit. I have before me a specimen of a claim form which appears to have been current in 1974. Much information is thereon requested from the claimant. Nowhere, however, is he invited to specify the starting date of his claim. Nowhere is he invited to give the type of information which would indicate that his claim was retrospective as well as prospective. The effective words of claim are simple: 'I claim benefit under the Supplementary Benefit Act, 1966'. The most recent claim form which I have seen (in use this year) is even more demanding in its requests for information; but, again, it is silent as to both the starting date of the claim and information which would indicate that the claim was retrospective. The effective words of claim are abbreviated to: 'I claim Supplementary Benefit'." (Paragraph 12)

What I there said in respect of "the most recent claim form which I have seen" holds good in respect of the form B1 in this appeal.

5. In R(SB)56/83 I sought to alleviate the hazards posed to claimants by the inadequacies of the claim form by holding that the words "I claim Supplementary Benefit" fell to be construed as meaning "I claim all that supplementary pension or supplementary allowance to which I am by law entitled" - with the consequence that it would be the duty of the local benefit officer to satisfy himself that no element of retrospection was envisaged by the claim. But in that I was wrong - as was held by the Tribunal of Commissioners which decided R(SB)9/84. In paragraph 11 of its decision the Tribunal said this:

"In our opinion it is necessary to give some content to the words in regulation 5(2) of the Claims and Payments Regulations: 'Where a claim.... is made in respect of a period earlier than the day on which it is made,'. That requirement will obviously be satisfied if the claim as presented specifically states that it is made in respect of an earlier period. In our opinion however it will suffice to meet that requirement if in connection with the investigation of a claim the issue of back-dating is raised by or on behalf of the claimant before the supplementary benefit officer makes his determination upon the claim." (The Tribunal's emphasis)

That decision was promulgated more than two-and-a-half years ago. But there has been no alteration of the material parts of form B1. As I asked rhetorically in paragraph 13 of R(SB)56/83: How is a claimant expected to know that he should expressly raise the issue of backdating? Where on the claim form is he expected to do it?

6. So in this case - as in many others - the issue of backdating was first raised by way of appeal to the appeal tribunal. At that stage the benefit officer reviewed his earlier decision - which was right and proper and in accordance with what the Commissioner was later to say in paragraph 6 of Decision R(SB)39/85. But it would surely be in everyone's interests if - by a very slight amendment to form B1 - a claimant's intentions in respect of back-dating could be clearly ascertained before his claim first comes before the adjudication officer. In this case, although the benefit officer reviewed his decision of 22 January 1983, he declined to revise it. So the appeal went ahead to the appeal tribunal. As was submitted by Mr Stocker, the grounds upon which it went so ahead called out for further elucidation. The claimant's written "grounds" of appeal were uninformative: "I would like to appeal against your decision not to pay Supplementary Allowance for the period 16th December 1982 to January 13th 1983."

But in the submission made by the benefit officer to the appeal tribunal was written:

"[The claimant] stated that he had delayed in sending in the form because he was

uncertain of how to complete one of the sections of the form and he said that it was not explained how important it was to send it as soon as possible."

7. The claimant did not attend before the appeal tribunal. He has since said that he was ill on the appointed date. He has produced no medical evidence by way of corroboration of that. His application to have the appeal tribunal's decision of 20 May 1983 set aside was rejected. He maintains some complaint on this aspect of the case. Since, however, I have decided that - on other grounds - the decision of 20 May 1983 falls to be set aside as erroneous in law, nothing is to be gained by going further into this corner of the matter.

8. The claimant's appeal to the appeal tribunal was disallowed. On the relevant form LT235 the findings of material fact are recorded thus:

> "A claim form for Supplementary Benefit was issued to the appellant on 20.12.82. The local DHSS office received it on 21.1.83. The appellant did not send it in earlier because he did not realise the importance of submitting it promptly."

The reasons for decision are set out thus:

> "Under Claims and Payments Regulations 3(3) the date of the appellant's claim is 20.1.83 as this was the date on which the claim form was first received. It was not returned to the Unemployment Benefit Office prior to this. The grounds advanced by the appellant for late submission do not constitute good cause within the meaning of Claims and Payments Regulations 5(2), as defined in Commissioner's decision R(SB)6/83. The importance of prompt submission is stressed at the head of the form and the appellant is not illiterate or of an unusually low standard of education."

9. I well appreciate that when a claimant fails to attend the hearing of his appeal he will often have only himself to blame if the appeal tribunal dismisses his appeal somewhat cursorily. In this particular case, however, I consider Mr Stocker to be right when he submits that the entries on form LT235 are too elliptic and uninformative to comply with what was then rule 7(2) of the Supplementary Benefits and Family Income Supplements (Appeal) Rules 1980 [SI - 1980 - No 1605] (now replaced in substance by regulation 19(2) of the Social Security (Adjudication) Regulations 1984 [SI - 1984 - No 451]. There is no express reference to the claimant's contention that the delay was due to his uncertainty as to how to complete one of the sections of form B1. (He has since explained that he had had difficulty in getting in touch with his landlord from whom he wished to ascertain whether his rent was or was not inclusive of rates.) Moreover, the appeal tribunal's assertion that "The importance of prompt submission is stressed at the head of the form" is a considerable over-simplification.

10. What in fact appears at the head of form B1 is the following:

> "When you have filled in the form, send it to us quickly. You could lose benefit if we do not get your form within three weeks." (The words which I have emphasised are printed in bold type.)

Those words were quoted by the Commissioner in Decision R(SB)39/85 and he had this to say about them:

> "But it may be material that the preliminary heading above cited contained no warning as to the '3 weeks' being of any limited application (although so far as I am aware it is a period of grace expressly directed only to claimants lately discharged from hospital). Thus it may, in my view, be material for the tribunal concerned at the rehearing to consider, amongst other questions, whether or not the claimant was furnished with a claim form which contained such an intimation and if so whether he took any and if so

what account of it in acting, and failing to act, as in fact he did in regard to the timing of his claim, and to make findings of fact in point and to consider their relevance or otherwise in arriving at the conclusion of law which they are charged with arriving at." (Paragraph 10(2))

11. I have myself in the past been puzzled by those "three weeks" and have, in common with the Commissioner who decided R(SB)39/85, felt that they were something of a snare to the unwary claimant. They certainly diminish such urgency as can be derived from the preceding sentence: "When you have filled in the form, send it to us quickly." If it has achieved nothing else, this appeal has enlightened me as to the genesis and purpose of those three weeks. I set them out here - as Mr Stocker explained them to me - because it is obvious that they are not of the "limited application" suspected by the Commissioner in R(SB)39/85.

12. Basically, a claim for a supplementary pension or a supplementary allowance must be made in writing to the Secretary of State ".... 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..." (regulation 3(1)(a) of the Supplementary Benefit (Claims and Payments) Regulations 1981 [SI - 1981 - No 1525]. But that is qualified by regulation 3(4)(b):

> "(4) Where -
>
> ....
>
> (b) a claim for a pension or allowance is made other than in writing, but is subsequently made in writing,
>
> the Secretary of State may treat the claim as if it had been duly made in the first instance."

Mr Stocker told me that the Secretary of State has indeed taken notice of the complexities posed by form B1. In effect, he uses the discretion conferred upon him by regulation 3(4)(b) to give claimants three weeks' grace. The oral request for a form B1 is regarded as "a claim for a pension or allowance... made other than in writing". The date is established by the stamping on the form B1 (as was done in the case before me) of the date upon which it was issued. If within three weeks thereafter (or such longer period as the Secretary of State may in particular cases allow) form B1 is returned duly completed, the Secretary of State invokes regulation 3(4)(b) and treats the claim as if it had been made on the occasion when the form B1 was issued. But if form B1 is returned more than three weeks after its issue - and the Secretary of State is not disposed to enlarge that period - he declines to treat the request for and issue of form B1 as the making of the claim. In such case the claim will be "made" on the day upon which form B1 is received at an office of the Department of Health and Social Security. To the extent that it is "late", it will then be for the adjudicating authorities to consider the issue of "continuous good cause for failure to make the claim before the day on which it was made" (regulation 5(2) of the Claims and Payments Regulations). Mr Stocker rightly stressed that in such circumstances the adjudicating authorities are concerned only with <u>what</u> the Secretary of State has or has not done pursuant to regulation 3(4)(b). They are not concerned with <u>why</u> he has so acted.

13. In this particular case the local benefit officer seems to have misapprehended the legal implications of the practice which I have described in paragraph 12 above. I quote the opening three paragraphs of his reasons for refusing to revise the decision of 22 January 1983:

> "[The claimant's] claim for benefit was first considered under Regulations 4 and 5A of the Claims and Payments Regulations. Regulation 4 states that 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.

> Regulation 5A provides that where the claimant is required to furnish the information requested and fails to do so within 21 days, the Secretary of State may, unless he is satisfied that such failure was reasonable in all the circumstances, treat the claim as having been withdrawn.
>
> It was decided that as [the claimant] had failed to send his claim form to the local office until 20.1.83, although he had received it on 20.12.82, the claim could be deemed to have been withdrawn until the payday following that is 21.1.83."

Regulation 4 opens: "Every person who makes a claim for benefit shall furnish..... etc". Regulation 3(4)(b) does not permit the Secretary of State to treat a non-written claim as a claim "duly made" until that claim "is subsequently made in writing". The local benefit officer appears to have regarded the issue to this claimant of form B1 as a requirement by the Secretary of State (under regulation 4) for the furnishing of "information....for the purpose of determining the claim". But, of course, that will not do. At that stage no claim had been made either actually or by virtue of the "treating" provision in regulation 3(4)(b). The Chief Commissioner expressly decided so much in decision on Commissioner's file CSB/287/1984.

14. I suspect that little of the foregoing will hold much interest for the claimant. What does matter to him is that this case must go back for rehearing by a differently constituted tribunal. As appears from paragraph 12 above, that tribunal will be in no way concerned with the Secretary of State's refusal to exercise the discretion given him by regulation 3(4)(b). It will be solely concerned with the application of the "good cause" criterion to the claim made on 20 January 1983. It will take full account of the claimant's explanations of the delay - including the fact that the claimant was, apparently, in doubt as to whether he was making what he calls "a fresh claim" or simply reinstating his earlier claim. It will take full account of the effect upon a reasonable claimant of the reference on form B1 to a period of three weeks (cf the quotation in paragraph 10 above from Decision R(SB)39/85). It will seek to establish what a reasonable man would have done in the overall circumstances in which the claiamnt found himself.

15. I do not wish to part with this case without stressing that I have been dealing with decisions made, respectively, by the benefit officer and an appeal tribunal well over three years ago. We have all since then learnt a great deal about the determination of supplementary benefit cases under the "new" system introduced in 1980.

16. My decision is as follows:

(1) The claimant's appeal is allowed.

(2) The decision of the supplementary benefit appeal tribunal dated 20 May 1983 is erroneous in law and is set aside.

(3) The case is referred to a differently constituted appeal tribunal for determination in accordance with the principles of law set out in this decision.

(Signed) J. Mitchell

Commissioner

Date: 2nd October 1986