

Reg 6(e) & (u) Sup Ben (Conditions of Entitlement) Regs. Since claimant's age did not affect his capacity for work, it was not a condition analogous to physical or mental disablement affecting his prospects of employment. Being appealed to Gt Appeal.

DGR/HJD/1

Commissioner's File: CSB/1054/89

SUPPLEMENTARY BENEFITS ACT 1976

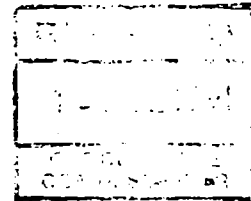
APPEAL TO THE COMMISSIONER FROM A DECISION OF A SOCIAL SECURITY APPEAL TRIBUNAL UPON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Stanley TIMMINS

Social Security Appeal Tribunal: Sheffield

Case No: 7134



1. My decision is that the decision of the social security appeal tribunal given on 25 July 1988 is erroneous in point of law, and accordingly I set it aside. As it is expedient that I give a decision the tribunal should have given, I further decide that the claimant, was, during the existence of the supplementary benefit legislation, required to be available for employment as a condition of receiving supplementary benefit.

2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the decision of the social security appeal tribunal of 25 July 1988.

3. The question for determination by the tribunal was whether the claimant could, by virtue of regulation 6 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981, for any period, escape the obligation, imposed on him by section 5 of the Supplementary Benefits Act 1976, of being available for employment as a condition of receiving supplementary benefit. If he could, then he was in a position to qualify for the long-term scale rate of benefit for the relevant period.

4. Regulation 6 provided as follows:-

"6. A claimant shall not be required to be available for employment under section 5 in any week in which one or more of the following paragraphs apply

(a) - (d)

(e) by reason of physical or mental disablement he has no further prospect of employment and in the 12 months immediately preceding has

(i) on average worked for less than 4 hours a week,

(ii) been available for employment under section 5 for not less than 39 weeks,

(iii) made reasonable efforts to find employment and not refused any suitable employment;

(f) - (t)

(f) - (t)

(u) the preceding paragraphs do not apply to him but the circumstances are analogous to any circumstances mentioned in one or more of those paragraphs and in the opinion of the benefit officer it would not be unreasonable to require him to be available for employment."

5. In the event, the tribunal, dismissing the appeal, decided that the claimant could not bring himself within regulation 6. However, the reasoning of the tribunal is not always easy to follow. It would appear that the claimant sought to bring himself within paragraph (u). His case would appear to have been that his age was an analogous condition to "physical or mental disablement" within paragraph (e).

6. The first question which the tribunal had to determine was whether the claimant could establish that he had no realistic prospects of further employment. If he could not, then there could be no question of his succeeding under paragraph (e), with or without paragraph (u), and that would be the end of the claimant's case. The tribunal appear to have decided that the claimant could not prove that he had no realistic prospects of future employment. For they said as follows:-

"Whilst acknowledging that the engineering industry locally had declined and therefore was generally looking for recruits from the younger age groups the Tribunal considered that there is employment in other spheres which could offer prospects of employment to [the claimant]. He had held responsible employment previously and this experience did not necessarily limit him to the engineering industry. Jobs were available for which retraining was not necessary."

7. If the tribunal were justified in reaching this conclusion, then that was the end of the case. Nothing else required investigation, and the fact that the tribunal went into the question of whether age was analogous to physical or mental disablement only served to muddy the clarity of that initial determination.

8. However, the adjudication officer now concerned, who supports the appeal, criticises the tribunal's finding of fact that the claimant still had realistic prospects of employment. He points out that the tribunal had "given no explanation of how this conclusion was reached or where such jobs may lie and the claimant does not know therefore why his evidence was not accepted by the tribunal". I see the force of that contention, and accept it.

9. Accordingly, in view of the fact that the tribunal did not explain how they reached their conclusion that the claimant still had realistic prospects of employment and in view of the muddled way in which they introduced the question of age, I must necessarily set aside their decision as being erroneous in point of law. However, it is unnecessary for me to remit the matter to a new tribunal for rehearing. I can conveniently substitute my own decision.

10. I will assume, for the purposes of disposing of this appeal, that, contrary to the finding of the tribunal, the claimant no longer had realistic prospects of employment. Accordingly, the next question to be determined is

whether this situation was occasioned by his "physical or mental disablement" or any analogous condition. The evidence is clear that the claimant did not suffer from any physical or mental condition, and accordingly the only outstanding issue was whether age might constitute an analogous condition. In the present case it clearly did not. The tribunal made a clear finding that the claimant's age did not affect his capacity for work. Moreover, they were entitled, on the evidence, to reach that conclusion. And, if age did not prevent the claimant from performing work, then it was clearly not a condition analogous to physical or mental disablement. It may, of course, be the case that the claimant's age was detrimental to his obtaining employment, but that is not the same thing as saying that his age prevented him from undertaking employment. It is important to realise that there is a distinction between age affecting a claimant's ability to perform work, and age being a bar to employment opportunities. An employer might be prejudiced against taking on persons over a certain age, but it does not necessarily mean that such persons were unable, simply by virtue of their age, to undertake the relevant work. The matter was clearly expressed in paragraph 23(d) of decision R(SB) 5/87:-

"In particular it cannot be asserted as a matter of principle that age can never under any circumstances be analogous to 'physical or mental disablement' for the purposes of regulation 6(e), as age may affect the claimant's ability to perform work, as opposed to employment opportunities not being available to him by reason of his age [my emphasis]."

11. Accordingly, as age was not in this case a bar to the claimant's performing work, it could not constitute a condition analogous to physical or mental disablement, and the consequence is that the claimant could not succeed under either paragraph (e) or paragraph (u).

12. My decision is, therefore, as set out in paragraph 1.

(signed) D G Rice
Commissioner

Date: 4 July 1991