

DGR/SH/14

Commissioner's File: CSB/036/1990

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. For the reasons set out below, the decision of the social security appeal tribunal given on 24 August 1989 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against the decision of the social security appeal tribunal of 24 August 1989.

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 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)

(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 be unreasonable to require him to be available for employment."

In the event, the tribunal by a majority upheld the adjudication officer, and decided that the claimant could not bring himself within regulation 6.

5. The majority members of the tribunal found as follows:-

"The chairman and one member decided that, particularly in view of the appellant's statement that he could do a job if he could get it, and that his health was not so bad as to prevent him working, and that he was only 54 in 1987, he had not shown that he satisfied any of the provisions of regulation 6 (including 6(u)), and he was therefore required to be available for employment, and was not entitled to the long-term rate of benefit."

The dissenting member gave the following reasons for his view:-

"One member considered that the appellant satisfied reg 6(u) by analogy with 6(e) because of his state of health. He would therefore have allowed the appeal."

I see nothing wrong in law with the majority's decision.

6. If the claimant was to bring himself within paragraph (e) of regulation 6, he had first to show that he had no realistic prospects of employment. The tribunal would appear to have accepted that such was the case, because they went on to consider whether this was occasioned by reason of "physical or mental disablement, pursuant to paragraph (e) or any analogous condition such as age, pursuant to paragraph (u). By a majority they decided that it was not. The crux of the matter was whether age could be regarded as analogous to physical or mental disablement, so as to be the cause of his being without realistic prospects of employment, but age could only fall into that category if it prevented the claimant from working as, for example, a footballer might be prevented from working after having attained a certain age. 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]."

7. In the present case, the majority were satisfied that the claimant was not prevented from working by reason of his ill-health, and in view of the claimant's statement that he could do a job if he could get one, they were justified in reaching that conclusion. Accordingly age was not the cause of the claimant's being without realistic prospects of employment, and it follows that there could be no question of the claimant's being able to satisfy paragraph (e) or (u) of regulation 6. No other paragraph was relevant.

8. The appeal is therefore dismissed.

(Signed) D.G. Rice
Commissioner

(Date) 2 March 1992