

MASTER

No good cause for backdating SB claim.

4 SEP 1987

DGR/SH/17/MD

Commissioner's File: CSB/123/1987

C A O File: AO 2257/SB/1987

Region: North Eastern

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Abid Hussain Ahmed

Social Security Appeal Tribunal: Leeds

Case No: 07/015-03

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 26 August 1986 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 a Commissioner, against the decision of the social security appeal tribunal of 26 August 1986.

3. On 10 January 1986 the adjudication officer decided that the claimant was not entitled to supplementary benefit for the period from 23 December 1985 to 17 January 1986 because he was not available for employment during that period. Manifestly, the terminal date of 17 January is a mistake for 7 January 1986. This is made perfectly clear by subsequent documentation. In due course, the claimant appealed to the tribunal, and doubtless he did so on the basis that he was available for employment during the relevant period. However, the tribunal did not consider this aspect of the case, but instead directed their attention exclusively to the question whether or not the adjudication officer was right to back-date the claim. For it was not until 7 January 1986 that a valid claim for supplementary benefit had actually been received, although the claimant had purported to claim benefit as from 23 December 1985. He had in fact completed the wrong form; but he nevertheless contended that he was entitled to have his claim back-dated to 23 December 1985. The adjudication officer appears to have accepted this contention, and to have decided the matter on the claimant's alleged non-availability for employment. This was not, however, the approach of the tribunal. They were satisfied that there was no right to back-dating in the first place, and it followed from this that the question of availability for employment simply did not arise.

4. Now, although it was obviously not the intention of the claimant in his appeal to the tribunal to contest the adjudication officer's back-dating of the claim, it cannot be over-emphasised that, once an appeal is lodged on entitlement, all aspects of the case are in issue, and it is open to the adjudicating authority to take any point which it considers relevant. Accordingly, the tribunal were entitled to consider whether the adjudication officer's initial decision to back-date the claim was in the circumstances justified.

Unfortunately for the claimant, they decided against him, and if that is right, that is the end of the matter.

5. The tribunal made the following findings of fact:-

"1. The Claimant or the Students Union, telephoned DHSS on December 12th stating that he was a student.

2. As a result form AI was issued on December 12th and completed at DHSS office on December 23rd and signed by the Claimant.

3. This form was inappropriate as by that date the Claimant was not a student. It is also inaccurate as it states that the Claimant's wife and children live with him, whereas they were in Pakistan.

4. On January 7 the Claimant attended the DHSS with a completed form BI which had been issued by the Department of Employment on January 6. This gave the correct information that at that date he lived alone.

5. It is alleged that he was told to withdraw his previous claim of December 23 as that was incorrect and only if this was done would benefit be considered on the basis of form BI. The claimant disputed withdrawing the previous claim.

6. The Claimant had periods of unemployment in February and November 1983 when the DHSS has records of claims for supplementary benefit based on the need to sign on as available for employment."

The tribunal gave the following reasons for their decision:-

"The claim on form BI appropriate to a Claimant who must be available for employment was received on January 7, 1986. The point in dispute is whether the previous form AI signed on December 23 and correctly issued by the DHSS on the information then available to them could be taken as a valid claim and the claim of January 7, 1986 back-dated in accordance with Regulation 5 of the Claims and Payments Regulations. Neither party contested that form AI was not a valid claim. All the Claimant's representative contended that the Claimant had every reason on December 23, 1985 to think that it was a valid claim. The Tribunal noted that the Claimant had previous experience of being unemployed and signing on at the Department of Employment Office in 1983. On January 6, 1986 he knew enough of the system to obtain form BI from the Department of Employment. Having regard to his previous experience of the system and his knowledge of where to obtain form BI, the Tribunal cannot accept good cause for failing to claim in the proper manner. R(SB)6/83 considered in arriving at this decision."

6. Now, whether or not there are grounds for back-dating a claim depends upon all the circumstances surrounding it. It calls for judgment on the part of the adjudicating authority on the evidence before it. It is a matter pre-eminently suitable for a tribunal, as at the end of the day the decision depends upon whether good cause for the lateness can be established in the light of the facts. (See regulation 5(2)(a) of the Supplementary Benefit (Claims and Payments) Regulations 1981). As stated earlier, the tribunal found that there were no grounds for back-dating the claim, and unless they failed to behave as a tribunal properly instructed as to the law and acting judicially should do I have no power to intervene. The tribunal took the view that the claimant was sufficiently experienced in "the system" that he had no justification for failing to produce a completed form BI on the date from which he wished to make his claim. I cannot say that this is an unreasonable approach on the part of the tribunal, and accordingly their decision must stand.

7. I have no option but to dismiss this appeal.

(Signed) D.G. Rice
Commissioner

Date: 27 August 1987