

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

1. My decision is that the decision of the social security appeal tribunal dated 18 May 1990 is not erroneous in law. Accordingly this appeal does not succeed.

2. The claimant appeals against the tribunal's decision in effect confirming the decision of an adjudication officer issued on 15 October 1989 that the claimant was required to be available for employment as a condition of entitlement to a supplementary allowance. That condition which is imposed by section 5(1) of the Supplementary Benefits Act 1976 (as in force at the material time) does not apply if any of the paragraphs of regulation 6 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 applies to the claimant and regulation 8 of those Regulations does not apply. The question for the tribunal was whether the claimant's circumstances were analogous to those to which paragraph (e) of regulation 6 applied so as to entitle the claimant to the benefit of paragraph (u). It was not suggested that any other paragraph of regulation 6 assisted the claimant. Nor was it in issue that regulation 8 did not apply.

3. The tribunal's findings of fact included the following -

"1. Mr Beresford is a 57 year old man who is in good general health and who left school at age 14 with no formal educational qualifications.

2. Unfortunately Mr Beresford has been unemployed since July 1980 when he was made redundant from a labouring job. Since then he has applied for numerous other jobs but has been unsuccessful as, generally, the employers have been looking for younger people. Indeed on one occasion about 3 years ago Mr Beresford was the only applicant for a job in a local abattoir but he was unsuccessful. The job was kept over for another month when it was taken by a much younger person."

And the tribunal, on the basis of those findings, concluded that the claimant's circumstances did not bring paragraph (u) of

regulation 6 into play in relation to paragraph (e) because the claimant's age did not affect his ability to perform his work; he could not get work because employers discriminated against men of the claimant's age. Now that plainly takes account of and indeed follows what was said by the Tribunal of Commissioners in R(SB) 5/87 in the now well-known passage, in paragraph 23(d) as follows -

"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 ... "

It is I think clear that age alone cannot be analogous to "physical or mental disablement"; that is underlined by paragraph (t) which allows those of 60 and over to go onto the long-term rate. So it seems to me that on the basis of the findings they made the tribunal were bound to reach the conclusion they did. The reasons they have given are perfectly clear and show that the tribunal reached their conclusion on the basis of the facts before them. They said -

"We find that in Mr Beresford's case he is fit and healthy and is able to work and that his age in no way affects his ability to perform work. Rather, we conclude, the fact that he has not been able to obtain work is not attributable in any sense to an inability on his part to perform work but quite simply because of the fact that the employment market prefers younger people, and, as a consequence, employment opportunities are not available to him because of his age."

Those reasons are fully consistent with what was said about age in R(SB) 5/87 and I do not detect any error of law on the part of the tribunal. The claimant's representative urges me to consider other Commissioners' decisions on the point. As however I am bound by the decision of the Tribunal of Commissioners in R(SB) 5/87 and as what was said there so clearly applies to this case I do not need to consider the matter further.

(Signed) R A Sanders  
Commissioner

Date: 3 March 1992