

SUPPLEMENTARY BENEFITS ACT 1976

APPLICATION FOR LEAVE TO APPEAL AND APPEAL FROM DECISION OF
SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Supplementary Benefit Appeal Tribunal: Southend-on-Sea

Case No: 08/38

[ORAL HEARING]

*Salary payments
+ holiday money
- concurrently*

CSB 261/1982

1. I grant the claimant leave to appeal against the decision of the supplementary benefit appeal tribunal given on 15 January 1982. Further, as the claimant and the benefit officer gave the necessary consents to my treating the application as the appeal, I further decide that the tribunal's decision is erroneous in point of law, and must be set aside. I direct that the matter be reheard by a differently constituted tribunal.

2. The claimant sought leave to appeal against the decision of the supplementary benefit appeal tribunal of 15 January 1982. He asked for an oral hearing, a request to which I acceded, and at that hearing he appeared in person, whilst the benefit officer was represented by Miss L Shuker of the Solicitors' Office of the Department of Health and Social Security. After the hearing had proceeded some while, I was satisfied that this was a proper case for the granting of leave to appeal, and as both parties were in agreement that I should treat the application as the appeal, I then proceeded to consider the appeal itself.

3. The facts of this case are simple and straightforward. The claimant, a civil servant, ceased employment on the 20th October 1981. He had on 30 September 1981 received a payment of £588.47 representing 1 month's salary, but he did not receive a final payment until 5 November 1981. That payment amounted to £490.23 representing 20 days' salary and 10½ days' holiday pay. He claimed supplementary benefit on 3 November 1981. The benefit officer decided that the claimant should be treated as in full-time employment until 3 December 1981, and accordingly that there was no entitlement to benefit until after that date.

4. On appeal to the supplementary benefit appeal tribunal the latter body upheld the appeal in part, deciding that the claimant "does not qualify for supplementary benefit until 30.11.81". They gave as the reasons for their decision the following:

"Regulation 9 of the Conditions of Entitlement Regulations 1980 were considered and therefore appellant was considered as remaining in full-time remunerative employment for 31 days from 30.10.81, being 20 days' wages plus 10½ days' holiday pay (Regulation 9(3)(b) applies) therefore the ½ day becomes a full day making a total of 31 days....."

They also made the following findings of facts:

"Appellant received 20 days' wages plus 10½ days' holiday pay, and this payment was due to him on his normal pay-day which would have been 30.10.81."

5. It is not in dispute in this case that, had the claimant remained in employment, the next normal pay day would have been 30 October 1981. Although the payment was not made until 5 November, the claimant and the benefit officer are agreed that the day on which the sum of £490.23 was payable within regulation 9(2) of the Supplementary Benefit (Resources) Regulations 1980 (as amended by the Supplementary Benefit (Miscellaneous Amendments) Regulations 1981) - these regulations have since been consolidated as the Supplementary Benefit (Resources) Regulations 1981 - was 30 October 1981.
6. In accordance with regulation 9(1)(b)(ii) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1980, for the purposes of supplementary benefit a claimant will be regarded as engaged in remunerative full-time employment, and consequently disentitled to benefit, for the period in respect of which his earnings fall to be taken into account pursuant to regulation 9(2) of the Supplementary Benefit (Resources) Regulations 1980 [now 1981]. The earnings which have to be taken into account are defined in regulation 10 and they include, not only salary, but "any holiday pay other than any received more than 4 weeks after termination of employment" (regulation 10(1)(e)).
7. Regulation 9(2)(a) of the Resources Regulations provides that in assessing entitlement to supplementary benefit, a payment of any relevant income shall be taken into account for a period equal to the length of the period in respect of which such income is payable, and regulation 9(2)(d) fixes the beginning of that period as the day on which the money is payable. As regards the salary paid to the claimant for his employment for the period 1 October to 20 October 1981 no difficulty ensues whatsoever. For supplementary benefit purposes such salary payment will be regarded as applicable to the inclusive period from 30 October to 18 November 1981, and during this period the claimant will be treated as being in full-time employment and not entitled to supplementary benefit. The real question at issue is the period to which the holiday pay of 10½ days shall be attributable. (Incidentally, pursuant to Regulation 9(3)(b) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1980 as amended, the period of 10½ days will be treated as being 11 whole days). Clearly for supplementary benefit purposes the holiday pay must be deemed to cover the claimant for a period of 11 days. But when does that period commence?
8. The tribunal took the view that the two periods should be added together, so as to render the claimant ineligible for benefit until 30 November 1981. In other words, they decided that the two periods should run consecutively, not concurrently.
9. Whether that conclusion was correct is an extremely difficult question and has recently been the subject matter of an appeal before a Tribunal of Commissioners (Commissioner's file No CSB/326/1983). The decision in that case will shortly be published.
10. I understand from the submissions of the claimant that he propounded the argument before the tribunal that the proper test was to apply the two periods concurrently, so that he became entitled to benefit from 19 November 1981 onwards. There is no reference in the tribunal's decision to their having taking this argument into account, and clearly the claimant has been left in the dark as to why it did not succeed. In those circumstances, the

tribunal erred in point of law, in that they were in breach of rule 7(2)(b) of the Appeals Rules. It follows that I must set aside their decision. Moreover I direct that the matter be reheard by a differently constituted tribunal.

11. By the time the new tribunal come to hear the matter, the decision of the Tribunal of Commissioners dealing with the crucial question, whether the periods shall run concurrently or consecutively, will have been issued, and the tribunal will be able to derive guidance from that particular decision. Although I do not anticipate any undue delay in its publication, the new tribunal must not, of course, consider the matter afresh until they have that decision before them.

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

Signed I O Griffiths
Chief Commissioner

Date: 10 February 1984

Commissioner's File: CSB/261/1982
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Region: London North