

T/RJK

CS 161/1982

SOCIAL SECURITY ACTS 1975 TO 1981

CLAIM FOR SICKNESS BENEFIT

DECISION OF A TRIBUNAL OF SOCIAL SECURITY COMMISSIONERS

1. Our decision is that:

(1) the conduct of the local tribunal complied with the rules of natural justice;

(2) the reasons for their decision dated 1 October 1981 were adequately stated and comply with the requirement to state reasons set out in regulation 12(2)(b) of the Social Security (Determination of Claims and Questions) Regulations 1975 [S.I. 1975 No. 558];

(3) the claimant is disqualified for receiving an increase of sickness benefit for his wife from 19 February 1981 to 6 June 1981 (both dates included) because his claim for that period made on 24 July 1981 was not made within the time limit set out in the regulations and he has not proved that there was continuous good cause for the delay in making the claim [Social Security Act 1975, section 82(1) and the Social Security (Claims and Payments) Regulations 1979 [S.I. 1979 No. 628], regulation 14 and Schedule 1];

(4) accordingly, the claimant's appeal is dismissed.

2. We held an oral hearing of this appeal. The claimant, who was unrepresented, appeared and gave evidence. The insurance officer was represented by Mr E O F Stocker of the Solicitor's Office, Department of Health and Social Security.

Nature of the appeal

3. This is an appeal by the claimant against the dismissal by a local tribunal of his appeal against the decision of a local insurance officer. That insurance officer decided, on 30 July 1981, that the claimant should be disqualified for receiving an increase of benefit for his wife for the above-mentioned period on the ground that his claim was out of time and that he had not shown continuous good cause for the delay in claiming.

4. Since the decision of the local tribunal was unanimous, leave to appeal against its decision was required. On its merits, the appeal is a hopeless one and leave would no doubt, in the normal course, have been refused by the chairman. But, in applying for leave to appeal, the claimant accused the chairman of unfairness and attacked the conduct of the tribunal hearing as not being in keeping with the rules of natural justice. In practice, in our experience, when faced with an attack of this character, chairmen usually, if not invariably, grant leave to appeal, acting no doubt, on the principle of nemo iudex in causa sua (no man shall be judge in his own cause - see Halsbury's Laws of England 4th Edition Volume 1, page 81 et seq); and the chairman in this case granted leave to appeal.

5. This is one of a number of appeals where leave has been obtained in this way on the basis of allegations which are either wholly unsupported by any proper particulars of the alleged unfairness or infringement of the rules of natural justice or are founded on a basic misconception of the nature of proceedings before a local tribunal. Unless the granting of leave is restricted to cases where there is a genuinely appealable issue, either on the merits or as to the conduct of the local tribunal hearing, the purpose of the statutory requirement of leave for appeals to the Commissioner from unanimous local tribunal decisions will be frustrated.

6. In view of the attack on the local tribunal, and its chairman, we have set out the facts which were in evidence before it, in detail, together with its decision and the claimant's application for leave to appeal and the grounds of that appeal, before turning to consider the rules of natural justice as they affect local tribunals, the principles on which leave should be granted or refused when it is alleged that these rules have been infringed, the tribunal's reasons for decision and, lastly, the merits, namely the question whether good cause has been shown by the claimant for the lateness of his claim for an increase of benefit.

The facts before the local tribunal

7. The claimant, a 35 year old police officer, fractured his right ankle when playing football on Sunday 15 February 1981. He was admitted to the local hospital on the same day and was discharged on 17 February 1981. On 16 February 1981 he was advised by a doctor, on form Med 3, to refrain from work for 4 weeks by reason of fractured right ankle.

8. The reverse side of this form was completed by the claimant. He signed the form directly below the printed words: "C The information given by me is true and complete. I claim benefit. Warning: To give false information may result in prosecution" and dated it 19 February 1981. The relevant questions or paragraphs in part A (which is the appropriate part in this case) were all answered correctly, except for paragraph 6, which was not completed.

9. Paragraph A6 is in these terms:

"DEPENDANTS: Your benefit may be increased for a wife or one other adult dependant, and for children. A separate claim MUST be made. Mark X in the proper box(es) if you wish a claim form to be sent to you."

Below the underlined words, which are printed in italics on the original form, there are 5 boxes, the first two of which are respectively headed "WIFE" and "CHILD OR CHILDREN". Each of these boxes were left blank by the claimant.

10. The front of form Med 3 contains, at the top, printed in red ink, the following:

["FOR SOCIAL SECURITY PURPOSES ONLY.] TO CLAIM BENEFIT COMPLETE THIS FORM, SIGN IT and send it without delay to the local Social Security Office. IMPORTANT - TO AVOID LOSING BENEFIT YOU SHOULD CLAIM PROMPTLY".

The words "IMPORTANT" and "LOSING BENEFIT" are printed in leaded type. A photocopy of both sides of the form Med 3 completed by the claimant was before the local tribunal.

11. (1) On 10 March 1981 form BF 60B (a copy of the original of which was also in evidence before the local tribunal) was issued to the claimant. This form is headed "A reminder about Doctor's statements ... from your Department of Health and Social Security local office". The first paragraph reminded the claimant that his last statement covered the period ending on 14 March 1981 and stated that if he wished to claim benefit for any subsequent period he would need to send in a further doctor's statement. The third paragraph is as follows:

"You should let us know at once if, at any time during the currency of your claim, there is a change in your circumstances or those of your dependants."

(2) The claimant wrote on the back of this form a note, which he signed and dated "13.2[sic]81":

"To DHSS

Please check that you
have got my flat rate
sickness benefit correct.
I have three children
d.o.b. 21.11.72
21.2.74
7. 8.79"

(3) The form was returned to the local office, who received it on 17 March 1981. On 18 March 1981 the claimant completed form BF11C claiming an increase of benefit for his three children. This claim was timeous.

12. On 21 July 1981, the claimant wrote to the local office, stating that he had been in receipt of sickness benefit from 15 February 1981 to 8 June 1981 as he was unable to work because of a broken leg, that he now understood from his employers that the weekly amount he was receiving indicated that he had a wife working and earning above the limit, and that this in fact was not the case. His wife did not work, and had not done so for the last 8 years. He continued:

"Please clarify this for me as I think I am right in claiming for my wife, as above, plus three children."

13. On 24 July 1981, the Manager of the local office replied to this letter stating that he had checked the claimant's claim and could find no trace of his having claimed for his wife. He continued:

"There is provision on the medical certificates for you to indicate whether you wish to claim for any dependants, but the boxes on your first certificate dated 16.2.81 were not crossed for any dependants.

Your claim therefore was treated as one for just yourself and you were sent the form BF11P with your first payment of benefit. The form BF11P did say on it you did not show any wish to claim dependant's benefit.

We did receive a note from you on 17.3.81 asking about your benefit in respect of your children and after you had completed the form BF11C, increase of benefit was paid in respect of them. At no time did you indicate you wished to claim for your wife.

I have enclosed the form BF11W for you to complete. If you wish to claim for your wife would you please return the form with a letter stating why you did not claim at the proper time.

Your claim will then be sent to an insurance officer who will give a decision on 'late claim to dependant's benefit' and you will be notified of his decision ..."

14. The claimant completed form BF11W, claiming an increase of benefit for his wife and signed and dated it 24 July 1981. His explanation of the delay in claiming, written on this form, was:

"With reference to the omission of my wife's name on the first medical certificate, I cannot honestly say why the relevant box was not ticked. I do remember being in hospital at the time and having had a pain killing injection someone asking me to fill in the form and sign it so that it could be whisked away and sent to my employer for reference, before being forwarded to you. Perhaps I can be excused then, because of the condition and and [sic] circumstances I found myself in plus the fact, although not a good reason in itself, I think I have only claimed sickness benefit once before in 19 years of employment. Of course the subsequent medical certificates, if I remember correctly, only ask for a declaration that that claim is not the first so they would be no help. I remember you writing to me about my children. I must have just assumed you were already taking my wife into consideration in making up the benefit. Indeed I wouldn't have known to this day that I hadn't claimed for my wife had my employers not informed me. I hope this is sufficient explanation."

15. The dates of the claimant's admission to hospital, 15 February 1981, and of his discharge from hospital, 17 February 1981, which were before the local tribunal are not in dispute.

16. On 30 July 1981, an insurance officer disqualified the claimant for receiving an increase of benefit for his wife from 19 February 1981 to 6 June 1981 on the ground that his claim on 21 [sic] July 1981 was not made within the time limit set out in the regulations and he had not proved that there was continuous good cause for the delay in making the claim. The claimant appealed to the local tribunal against this decision on the following grounds:

"that he [the insurance officer] failed to consider the real reason for the omission of the claim in respect of my wife. I said earlier that I had mistakenly omitted her name from the claim and now he is saying there isn't good cause for the delay in making the claim. There is a clear distinction here to my mind - my problem is that I made a mistake on the initial claim - it is not that I knowingly or recklessly delayed in making a claim. As soon as I was made aware of my mistake I wrote to the D.H.S.S.

There is a Public Law issue at stake here. Is the D.H.S.S. on the one hand stating that if someone makes a mistake on their claim they will be denied their full entitlement, whilst on the other hand publicly advertising that certain others may not be claiming enough"

17. The local tribunal had before it, in addition to the above information, copies of the above correspondence and a clean print of form BF11P, and a written submission from the insurance officer. In this, after summarising the facts, he stated that as the claimant had given no indication on form Med 3 at A6 that he wished to claim for any dependants, sickness benefit at the personal rate was put into payment and with the first payment of benefit on 2 March 1981 form BF11P was enclosed, page 2 of which drew the claimant's attention to the fact that his claim did not show that he wished to claim for any dependants.

18. In summarising the relevant law, which he did accurately, the insurance officer explained in his submission that the time limit for claiming an increase of benefit for an adult dependant was one calendar month from the earliest day for which the increase of benefit was claimed, and that if the claim was made outside this time limit, the claimant was disqualified for receiving increase of invalidity [sic - a mistake for "sickness"] benefit for any day more than one calendar month before the date on which the claim was made, unless he showed good cause for the delay throughout a period immediately preceding the claim. Where the claimant showed good cause throughout the whole period of delay, there was no disqualification for late claim. Where he showed good cause only for a shorter period up to the date of claim, he would escape disqualification for any day not more than one calendar month before the date on which the period of good cause commenced.

19. The insurance officer pointed out that in Decision R(S) 2/63, paragraph 11, a Tribunal of Commissioners had re-affirmed the description of good cause in Decision CS 371/49 (KL) in which "good cause" was described as some fact, which, having regard to all the circumstances (including the claimant's state of health and the information which he had received and

that which he might have obtained) would probably have caused a reasonable person of his age and experience to act, or fail to act, as the claimant did. In the insurance officer's submission, although there was nothing unusual in a claimant believing when he made a claim for sickness benefit that that was a claim for all to which he was entitled, it would have been reasonable for the claimant to have made enquiries about the rate of his benefit when he received form BF11P which, as the Commissioner stated in paragraph 6 of R(S) 3/63, "sets out in very clear language the fact that an early claim for his wife and children is necessary as delay may result in loss of benefit." Accordingly, the insurance officer submitted that the claimant had failed to show good cause for the delay in claiming benefit and should be disqualified for receiving an increase of benefit for his wife from 19 February 1981 to 6 June 1981.

The decision of the local tribunal

20. The appeal to the local tribunal was heard on 1 October 1981 and the proceedings have been recorded, in the usual way, on form LT3 and signed by the chairman. Box 1 (chairman's note of evidence) states:

"Claimant

Did not claim for dependants. Raised question of children's benefit on 13 March 1981. I had a message I was not claiming for my children. I always thought I had claimed for my wife. I agree that in fact I had not claimed for her. I do not think I received leaflets referred to in the documents. I thought I was being paid the full allowance. I was ill at the time and failed to apply for dependants.

I accept I failed to fill in the form correctly.

Insurance Officer

RS 3/63 refers to form BF11P not having been sent. Records show this form was issued with the first payment. Must have continuous good cause up to day before the date of claim.

Claimant

I do not think Insurance Officer is sure form was sent. I submit had good cause.

Insurance Officer

No mention of wife when he claimed for children."

Box 2 (findings on questions of fact material to decision) states:

"Claimant (35) incapacitated 16.2.81 to 6.6.81 (inclusive). Claimed benefit for himself and was paid. Later claimed for children and was paid. On 21.7.81 claimant indicated he wished to claim for wife. Form BF11W was completed and returned. See document 3/3A."

Box 3 (Full text of unanimous decision on the Appeal) states:

"Appeal fails.

Disqualified for increase of sickness benefit for [claimant's wife]
19 February 1981 to 6 June 1981 (inclusive)."

Box 4 (Grounds of decision (including reported decisions of the Commissioner considered by tribunal)) states:

"Claim made on 21 [sic] July 1981 not within time limit in regulations and no continuous good cause for delay.

R(S) 3/63 duly considered. Claimant should have been alerted when he claimed for children."

The application for leave to appeal

21. On 23 October 1981, the claimant applied for leave to appeal against the decision of the local tribunal in these terms:

"I wish to appeal against the decision of the tribunal in the above case on the following grounds:

1/ The chairman conducted the hearing in an accusatory and unfair manner asking questions of me which indicated his assumption of my "guilt" before my reply and at one stage accused me of not being sufficiently bothered to read the literature sent to me. The conduct of the tribunal was not in my view in keeping with the rules of natural justice.

2/ The tribunal failed to properly consider the reasons that I gave to assert my good cause for failing to make a prompt claim for benefit. The cause I gave that my sickness affected my thoroughness in completing the first medical certificate was dismissed out of hand without giving proper consideration to the case R(S) 3/63.

My assertion that I had not been alerted of my mistake by the DHSS as I had not received form BF11P was dismissed apparently because the tribunal preferred to accept the insurance officer's submission that it had been sent.

My assertion that I was not alerted to my mistake, regarding not claiming for my wife, when I claimed for my children, was not fully considered.

3/ Inadequate reasons have been given to me as to why my appeal should have failed.

I therefore apply to the Chairman for leave to appeal."

The chairman of the local tribunal granted leave to appeal on 31 October 1981.

The claimant's grounds of appeal

22. On 12 November 1981, the claimant submitted his grounds of appeal in more detail. Since he gave oral evidence before us, it is not necessary to quote them except on two points, first, his explanation of his failure to complete the box at A6 on form Med 3 and, secondly, his assertion that the hearing before the local tribunal was contrary to the rules of natural

justice. As regards (1), the claimant wrote:

"When I made out my first medical certificate I omitted to put a cross in the boxes for my dependant wife and three children. I don't know why I made this omission. It came as a surprise to me when I found out. I believed throughout my sickness, until I was told different, that I have in fact claimed for all to which I was entitled. The only explanation I can give for the omission is that I have never claimed sickness benefit before. I have worked since July 1962, and that my sickness at the time effected [sic] my mind to such an extent that I made the mistake.

The reason that I was issued with the first certificate was because I had broken my leg playing football. The break was quite a serious one because not only was my fibula broken, but also an ankle bone, and my foot was dislocated. I had to remain in hospital for 3 days during which time I had three different plasters on as doctor's [sic] could not decide whether to pin my bones or not. Eventually it was decided that I wouldn't have to undergo an operation for "pinning" but I would have to have my foot manipulated back into position, under anaesthetic.

I think you can imagine that I was pretty physically sick but in addition to this I had the concern of having to cope as a father with three young children, plus the fact that I was a 1st year mature student at Sheffield University reading law. Obviously I knew that my attendance at University for that year would be severely reduced and I was anxious as to how I was to cope without having the benefit of the legal material in the law library. I think I can safely claim therefore that in addition to my physical sickness there was also the problem of being consumed with anxiety and worry."

As regards (2), the claimant wrote:

"I have already indicated that I do not think that the rules of natural justice were observed at the tribunal. I was accused of not being bothered enough to read the literature. They appeared to accept outright that the insurance officer's claim that I had been forwarded the form BF11P was right. I was accused in the following manner, 'If you weren't too ill to fill in your name and address on the form you can't have been too ill to fill in the dependants box.' This I found a completely ill judged accusation and I tried to explain that I wasn't too ill to fill in the form but I was ill enough to make a mistake on it.

I was told that as a policeman, daily completing forms and the like, I couldn't make a mistake. This again appeared to me to be an ill judged remark as arguably, policeman are human and do err. (It would be a nicer world and less problematic legal system if they didn't). In addition of course I was ill and not a fully functioning, alert and able policeman at the time."

23. The insurance officer now concerned has made a written submission in which, after pointing out that the claim for an increase for the claimant's wife was made on 24 July 1981 (not 21 July 1981 as stated in the original insurance officer's decision of 30 July 1981 and in the local tribunal decision), he supports the decision of the local tribunal.

24. (1) In directions for an oral hearing before a Tribunal of Commissioners, the claimant was informed that if he had, or wished to obtain, medical evidence that his sickness (fractured right ankle) at the time he completed form Med 3 (19 February 1981) had affected his mind, this should be put before the Tribunal at or prior to the hearing. At the hearing, the claimant produced a letter dated 16 June 1982 written by the partner of his former doctor, who is now dead, stating that he supports the claimant's explanation that the omission to claim sick pay for his wife "was a genuine omission and I believe this is understandable considering the many other things which he might have had on his mind at the time." The letter contains nothing to indicate any opinion of the doctor as to whether the claimant's sickness (fractured right ankle) would have affected his mind at the time when he completed form Med 3 (19 February 1981).

(2) Before us, the claimant adopted his written submission and, in reply to a question, added that he considered that in addition to not listening to him fairly, the chairman showed personal bias against him because he was a policeman. The chairman had approached the matter in an accusatorial manner. He had accused him of not having bothered to read the papers and had assumed that he wasn't allowed to make mistakes being a policeman. However, the claimant said that he did not want to make a big issue about the local tribunal conduct.

The rules of natural justice

25. A local tribunal is exercising quasi-judicial functions and forms part of the statutory machinery for investigating claims in order to ascertain whether the claimant satisfies the statutory requirements which entitle him to be paid benefit. Its investigatory function has as its object the ascertainment of the facts and the determination of the truth and it is not restricted, as in ordinary litigation where there are proceedings between parties, to accepting or rejecting the respective contentions of the claimant on the one hand and of the insurance officer on the other. The common law requires bodies exercising quasi-judicial functions to observe the rules of natural justice, and accordingly these rules apply to local tribunals: see the judgment of Lord Justice Diplock in R v Deputy Industrial Injuries Commissioner ex parte Moore [1965] 1 Q.B. 456 at pages 486 et seq.

26. Natural justice requires that the procedure before any tribunal which is acting judicially shall be fair in all the circumstances. It has been described as "fair play in action" and its requirements depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with and so on: see Wiseman v Borneman [1971] A.C. 297 at pages 308, 309, 311, 314, 315, and 320 (per Lords Reid, Morris, Guest, Donovan and Wilberforce). There are accordingly no hard and fast rules that apply to all tribunals. But, in the case of an appeal by a claimant for benefit to a local tribunal, for practical purposes these requirements can be reduced, as indicated by Lord Justice Diplock (as he then was) in Moore's case at pages 486 et seq to three: an absence of personal bias or mala fides on the part of the tribunal, an obligation to base their decision on evidence and, whether or not there is an oral hearing, to listen fairly to the contentions of all persons entitled to be represented.

27. After carefully listening to the claimant's evidence and submissions before us, and considering the whole of the case papers, including all of his written submissions, we can find absolutely nothing to support the allegation of personal bias, or bias of any kind, on the part of the chairman or any other member of the local tribunal. The local tribunal was under a duty to investigate the grounds on which the claimant contended that he had good cause for the lateness of his claim for an increase of benefit and it was natural that in ascertaining the facts the legally qualified chairman should question the claimant in order to discover why he, a policeman who might reasonably be expected to be familiar with form-filling, had omitted to complete the dependant's box on form Med 3. The nature of the claimant's usual occupation and of his experience in form-filling was highly relevant when considering whether "good cause" had been shown, in the light of the specific description of "good cause" contained in Decision R(S) 2/63 (a decision of a Tribunal of Commissioners which was binding on the local tribunal) as depending on the age and experience (amongst other matters) of the claimant. The claimant clearly took offence at the investigatory nature of the proceedings and wrongly regarded the probing questions that he was, quite properly, asked by the chairman as "accusatory" and as assuming "guilt".

28. The claimant complains that his contentions were not fairly listened to. In particular, he says that it was accepted by the tribunal that form BF11P was received by him when he the claimant denied this, that he was the subject matter of accusation because it was suggested to him that if he was not too ill to fill in his name and address on form Med 3 he could not have been too ill to complete the dependant's box and that as a policeman he could not make a mistake. We do not accept any of these complaints as having any substance. The local tribunal members made no finding that the claimant had received form BF11P. Their decision did not proceed on the basis that the claimant should have filled in the dependant's box on form Med 3. In the exercise of their investigatory functions, the tribunal members were entirely entitled, indeed it was their clear duty, to ask the claimant the two obvious questions, namely why he contended he was too ill to complete the dependant's box when he had filled in other parts of the form (after all, his ailment was a broken leg, not prima facie something which would affect the mind) and why he did not read form BF11P, which was recorded as having been sent to him. This does not show bias. Nor does the emphasis placed, as we shall accept for the purposes of this decision that it was placed, by the chairman on the fact that the claimant was a policeman. The tribunal, as already explained, quite rightly considered this to be a relevant fact. The claimant, as a policeman, is likely to be familiar with filling in forms. As his written submissions, and our own observation of him when giving evidence, demonstrate, he is clearly a highly intelligent and experienced man. When considering whether good cause for delay in claiming has been shown, it is right and proper that these points should be put to him.

29. If we had considered that there was the slightest ground for suspecting that the chairman, or any other member of the tribunal, had shown bias or that the claimant had not been fairly listened to we should have directed the insurance officer to obtain written statements from (a) the insurance officer who appeared before the local tribunal; (b) the clerk to the local tribunal and (c) each of the members of the local tribunal, putting before each of them the specific allegations made by the claimant. We are, however, satisfied that the allegations of personal bias and that his contentions were not fairly listened to are based on a complete misconception of the investigatory nature of local tribunal proceedings and are entirely without substance and we reject them outright.

The principles on which leave should be granted or refused

30. Section 15 of the Social Security Act 1980 provides that an appeal to the Commissioner shall only lie from the unanimous decision of a local tribunal with the leave of the chairman of the local tribunal when that decision was given or, in a case prescribed by regulations, with the leave of a person appointed to act as chairman of such a tribunal who is selected in accordance with regulations or if he refuses leave, with the leave of a Commissioner. Regulations made under this section contain no indication as to the circumstances in which such leave shall or shall not be given: see regulation 12A of the Social Security (Determination of Claims and Questions) Regulations 1975, which was inserted in those regulations by regulation 5 of S.I. 1980 No. 1622 as from 24 November 1980. In our judgment, the chairman has a discretion whether or not to grant leave to appeal, which is unfettered provided that it is exercised in a judicial manner. But, in exercising that discretion, the object of the introduction of section 15 of the Social Security Act 1980 should be kept in view. This was the restriction of the number of appeals from unanimous decisions of local tribunals to those which are neither hopeless nor frivolous and raise a serious issue. If the conduct of the proceedings before the local tribunal is seriously in question, leave should be given. Where, however, the local tribunal is attacked in general terms, without any particulars of the detailed conduct complained of or with details which (as in the present case) merely amount to a complaint against the tribunal, or its chairman, for exercising its investigatory functions, the chairman should refuse. Such a refusal does not shut the claimant out, because he can seek leave to appeal, as of right, from a Commissioner.

The reasons for the local tribunal decision

31. Regulation 12(2)(b) of the Social Security (Determination of Claims and Questions) Regulations 1975 requires a local tribunal to include in the record of every decision a statement of the grounds of such decision and of its findings on questions on fact material thereto. The facts found and the reasons given need not be lengthy, if the tribunal leaves the claimant, in cases where the appeal is dismissed, in no doubt as to why the decision went against him and he is not left guessing. In our judgment, the record of the local tribunal decision is quite clear in these respects. Good cause was held by the tribunal not to have been shown because the claimant was put on enquiry as to whether he had claimed an increase for his wife by the discovery of his failure to claim for his three children and he had then done nothing. The claimant's complaint that inadequate reasons were given for the local tribunal decision accordingly fails.

"Good cause"

32. The claimant in this case is a highly intelligent and experienced man familiar, as a policeman and law student, with the importance of forms and legal requirements. In our judgment, a reasonable man in his position, when he had been sent form BF60B (see paragraph 11 above) raising the question of benefit paid to dependants, and had (on information received from the police authority) queried whether the proper benefit was being paid for his three children, had found out that it was not and had then been required to complete an additional form (form BF11C) claiming benefit for them, should have been put on enquiry as to whether he was receiving an appropriate increase for his wife. For this reason, we agree that the local tribunal decision was correct and that good cause for the delay in

claiming has not been shown. For the claimant made no enquiry at all until much later when the police authority alerted him to the fact that he was not receiving benefit for his wife. Good cause can only be accepted from 21 July 1981, when he first made enquiry of the Department of Health and Social Security, to 24 July 1981, when the claim for an increase was made. This does not assist the claimant.

33. The local tribunal made no finding as to whether or not the claimant received form BF11P. We have formed an unanimous view on this point. The Departmental record of forms sent to the claimant is included in the case papers and shows that on 2 March 1981 forms BS12, BF11P and BF168RN1 were all sent to the claimant. The usual and almost invariable practice is for these forms to be included in the same envelope as the claimant's first payment of benefit, which it is not in dispute he received. The claimant, before us, was definite that he did not receive form BF11P. But he could not remember whether he received form BS12 and BF168RN1. If he had received form BF11P he says he is sure that he would have claimed. But, after seeing and hearing the claimant and considering the rest of the evidence, we do not think that the claimant's memory in relation to social security matters is reliable. He was initially definite that he completed form Med 3 in hospital. But he was discharged from hospital on 17 February 1981 and dated his claim on form Med 3 19 February 1981. We think this was correctly dated and that the form was completed on that date. Later in completing his grounds of appeal, he stated that he had never previously made a claim for sickness benefit. But the claimant's benefit history sheet shows that he had twice made previous claims. It is for us to consider, adopting a civil standard of proof, whether on a balance of probability, the claimant did receive form BF11P. The records show it as having been sent. The practice is to send it with the first payment. The claimant received the first payment. On a balance of probability, we are all of the view that the claimant did receive form BF11P, though we entirely accept that he is now genuinely convinced that he did not. On this finding, the claimant should have been alerted to the fact that he was receiving no benefit for his dependants. Since he made no enquiries thereafter, we agree with the written submission of the insurance officer to the local tribunal that, on this ground also, good cause has not been shown.

34. The most important issue relating to good cause, however, is the fact that the claimant failed to complete the dependant's box on form A6. In our judgment, the statement quoted at the head of that box, which is set out in full in paragraph 9 above, clearly alerts any claimant who is capable of understanding the form at all, to the fact that a separate claim for a dependant must be made and puts him on enquiry. No claimant whose mind is unaffected by illness and who is in full possession of his mental faculties is entitled to assume that he has claimed all he is entitled to, if he disregards this fact. We agree with the actual decision given by the Commissioner in reported Decision R(S) 3/63, where he held that a claimant who had failed to complete the dependant's box and who had not received form BF11P, had shown good cause for the delay in claiming. In that case the Commissioner accepted, as a fact, and so found, that the claimant's illness (infective hepatitis) was characterized by its effect on the mind, inducing a form of pessimism or indifference to things in general. The remarks in paragraph 6 of the decision that:

"In my view there is nothing unreasonable or anything unlikely in a claimant believing when he makes a claim for sickness benefit that that is a claim for all that he is entitled to and

if he fails to make inquiry as to further benefit one should be slow to deprive him of benefit. It is a very different case where a man does not claim at all."

are not necessary to his decision and are in our view strictly obiter. We do not agree with them and they should no longer be applied and followed in cases where the form completed by the claimant contains a warning that a separate claim for dependants must be made.

35. In the present case, there is no medical evidence that the claimant's broken leg had any effect on his mind. He had been discharged from hospital and although he was still (according to his own evidence) probably taking pain-killers, we are not satisfied that this, or his family and educational worries, would have prevented a reasonable man of his age and experience from completing the dependant's box. After failing to complete this box, which in our view clearly alerts a claimant to the need to make a separate claim for dependants and makes it clear that the claim on form Med 3 does not amount to a claim for all that the claimant may be entitled to, if he has dependants, there was no subsequent event which would, in our view entitle the claimant to assume that he was receiving an increase for his wife. A reasonable person, of the claimant's age and experience, suffering from a broken leg, would have completed the dependant's box so as to ask for a claim form for an increase for his wife. If he had omitted to do so, he should have been alerted by the receipt of form BF11P which showed that he was receiving no dependant's benefit at all, and that he was receiving personal benefit only. If he had disregarded this, a reasonable man of the claimant's age and experience would have been put on enquiry when he discovered that he had failed to claim dependency benefit for his children as to whether he was receiving it for his wife. Applying the test of "good cause" approved by a Tribunal of Commissioners in Decision R(S) 2/63, and summarised in paragraph 19 above, this was accordingly an exceptionally clear case where the onus of showing continuous good cause for the delay in claiming has not been shown.

36. The appeal must accordingly fail. Our decision is set out in paragraph 1.

(Signed) I O Griffiths
Chief Commissioner

(Signed) V G H Hallett
Commissioner

(Signed) D G Rice
Commissioner

Commissioner's file: CS/161/1982
CIO file: I.O. 8420/S/81
Region: Yorkshire and Humberside

Date: 15 July 1982