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IEJ/AJ

SOCIAL SECURITY ACTS 1975 TO 1981

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

COMMISSIONERS DECISION
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Name: .

Local T

Case No

1. (1) This is a claimant's appeal from the unanimous decision dated 1 September 1982 of a local tribunal, brought by the tribunal chairman's leave. The tribunal decided that unemployment benefit was not payable from 27 January 1982 to 19 April 1982 (both dates included), or for the period from 20 April 1982 to 24 May 1982 (both dates included), on the ground (in each case) that the claimant did not satisfy the requirements of section 17(1)(a)(i) of the Social Security Act 1975 ("the Act"). In so deciding the tribunal were as to the first of such periods upholding an insurance officer's decision dated 21 April 1982, and as to the second determining a question referred for their decision.
- (2) There is in my view an arguable case for holding both that the tribunal "asked themselves the wrong questions" and that they failed to state with sufficient particularity their findings of fact and reasons for decision as required by law. But since an appeal to the Commissioner in this branch of his jurisdiction is technically by way of re-hearing I find it unnecessary to pursue that approach, since I can myself determine the appeal afresh upon its merits.
- (3) The appeal is allowed. My decision is that the claimant has proved that he was available to be employed throughout the periods from 27 January 1982 to 19 April 1982 (both dates included), and from 20 April 1982 to 24 May 1982 (both dates included), within the meaning of section 17(1)(a)(i) of the Act.

seaside pier. It was a summer seasonal employment in character, and though it started on a part-time basis in April it expanded into a full-time employment over the summer "high season" and then fell off again as autumn succeeded summer. He was finally laid off before October was out, and on finishing went to the local Careers Office in the hope of finding permanent employment. But he was there advised that the employment situation was such that it was likely to be several months before they could offer him any vacancy.

- (2) With what may at large be regarded as a commendable initiative against "idling his time away" in the circumstances, the claimant then enrolled at a local College of Further and Higher Education for courses in 'A' level English and in Law for the academic year 1981/82, and obtained a local authority discretionary award in respect of his registration fee, tuition fees and examination fee. In connection with that award the granting authority exacted an undertaking from the claimant that if for any reason whatever he ceased attendance before the normal date of termination of the award he would repay upon demand such proportion of the award as might be required by the Education Committee. His course of study involved attending lectures during term time, at the college; and though it does not appear that he was made aware of it (and I do not regard it as a material consideration in the context of this appeal) it appears also that he was expected to engage in private study in his own time (with no requirement that it be on college premises) for a further 9 hours each week. His required attendances varied from day to day according to the college timetable. On Mondays, Tuesdays and Thursdays, the hours were 9.00 am to 12.00 noon, with the addition of 1.00 pm to 4.00 pm on Tuesdays and 2.00 pm to 5.00 pm on Thursdays. On Wednesdays his only commitment was 1.00 to 2.00 pm, whilst on Fridays his commitment was from 11.00 am to 12.00 noon and again from 1.00 pm to 4.00 pm. This would total 20 hours, but the claimant indicates a total of 18 hours - and I infer that the difference is attributable to short "break periods" in the longer sessions. The course was to end on a date in June, outside the period with which this appeal is concerned; and I infer from the absence of any suggestion to the contrary that he duly conformed with the course requirements. As from a date in January 1982 he commenced to claim unemployment benefit, and thereafter continued at all material times to register fortnightly for employment, as he was required to. The periods with which this appeal is concerned include a period of three weeks of college Easter vacation.

4. (1) It is well established that before a claimant can be regarded as available for employment he must show that he is able and willing to work on conditions and for hours similar to those on and for which persons are employed in the area within which he is prepared to work, and that his profession of availability or willingness to work must not be hedged about with restrictions which will render his chances of obtaining employment negligible: see, for example, tribunal Decision R(U) 12/52.

(2) By those criteria I have no hesitation in concluding that if the claimant had restricted his range of acceptable employments in such manner as to preclude employment interfering with the days and hours for which he had engaged to attend the course he could not have succeeded in proving availability for employment within the meaning of the Act.

(3) However, that was not the case. Consistently, and throughout, he has contended that he was at any time prepared to give up the course and accept such obligation for repayment of his award as that entailed if and so soon as any suitable offer of employment was notified to him. As to that, it is asserted against him that there is no evidence of his having made any positive efforts to obtain employment - but whilst there is some truth in that, it is not wholly accurate in that it is not in dispute that he had been to the Job Centre and had left word with the Job Centre as to where he could be contacted, and provided his home telephone number as well as his address there and particulars of the college. Moreover I observe from the case file that when the Department had occasion to contact him at home by telephone they experienced no difficulty in ascertaining relevant information on enquiry from the claimant's mother there.

5. There are many cases in which proof of positive personal initiatives to obtain employment by private effort is a ready means of substantiating availability for employment, but the material legislation does not impose any affirmative obligation upon a claimant in this respect. And the Department of Employment, equipped with the means of contacting a claimant, can readily negate a claimant's protestations of availability by notifying vacancies, if there are any. And though the claimant did not throughout indicate wholly unrestricted willingness to accept employment in terms of days, hours and remuneration, I do not regard his stated restrictions as inconsistent with a reasonable availability for employment.

6. (1) The crux of the material issue in my judgment lies in applying appropriately the principle that matters of intention are matters of fact but can be evaluated only by considering overt acts and omissions. The overt acts are those I have already indicated, and there are no material overt omissions in evidence. No doubt for the sufficient reason that, as

8. Whether my present decision will afford the claimant any practical advantage is a matter involving complex considerations outside the scope of the present appeal. But upon that he has succeeded, and my decision is as indicated in paragraph 1(3) above.

(Signed) I Edwards-Jones
Commissioner

Date: 13 April 1983

Commissioner's file: C.U. 11/1983
C I O File: I.O. 3277/U/82
Region: North Western