

Special Reasons for Late Appeal to
the Commissioner

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76/94

MJG/SH/3

Commissioner's File: CU/012/1994

SOCIAL SECURITY ACTS 1975 TO 1990

SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

RULING

1. I do not accept the notice of appeal served by the Adjudication Officer on the Commissioner on 31 January 1994 because (a) that notice of appeal was not served within 42 days of the date on which the adjudication officer was given notice in writing that leave to appeal had been granted (b) and I do not accept that there are "special reasons" for accepting a late appeal in this case: Social Security Commissioners Procedure Regulations 1987, S.I. 1987 No.214, regulation 7.

2. At a hearing before me on 24 June 1994, Mr Prosser of Counsel made application to me to admit a late appeal by the Adjudication Officer in this case. The late appeal was sought to be made against the unanimous decision dated 12 July 1993 of a social security appeal tribunal, which had allowed the claimant's appeal against a decision of the local adjudication officer. That decision had disqualified the claimant for receiving unemployment benefit for the inclusive period from 24 November 1992 to 24 May 1993 on the ground that he had voluntarily left his employment (as a police officer) without just cause. The tribunal's unanimous decision was, "The claimant is not disqualified to receive [Unemployment benefit] from 24 November 1992 to 24 May 1993 (both dates included). He did leave voluntarily his employment, but he had just cause to do so."

3. The Adjudication Officer's appeal was approximately eight days late - it is not clear exactly on which day the adjudication

officer was notified of the grant of leave to appeal by the local tribunal chairman. The principal reason put forward for the lateness was as follows,

"I cite as special reasons, required by regulation 7(2) [of the Social Security Commissioner's Procedure Regulations 1987], that the delay in the present submission is due to my decision to await a resolution on the 'reporting' of decision CU/170/92, which dealt with the issue of police officers who left the Service and with the relevance of an earlier decision (CU/095/89). I considered that a resolution of the status of CU/170/92 might make the present appeal, which also involves the matter of CU/095/89, unnecessary to pursue on the issues of law. As at 26.1.94 I do not know whether CU/070/92 is to be reported and, accordingly, I wish to pursue the present appeal. I attach a copy of relevant correspondence relating to CU/170/92." (paragraph 4 of a memorandum accompanying the late notice of appeal).

The application for an extension of time was resisted by Mr Moss on behalf of the claimant. Mr. Moss submitted that it was apparent right from the time the tribunal was first held that this was a case which was likely to go to the Commissioner.

4. As to awaiting a decision of the Chief Commissioner on the reporting of the decision on file CU/170/92, the relevant dates are as follows. That decision was given on 9 November 1993 by Commissioner Rowland. He did not 'star' the decision for possible reporting. It was received by the Central Adjudication Service on 24 November 1993. On 16 December 1993 the Chief Adjudication Officer by a written memorandum of that date requested the Chief Commissioner to consider having the case 'starred' and circulated for possible reporting. The Chief Adjudication Officer gave detailed reasons for submitting that the case ought to be reported.

5. In fact the Chief Commissioner acceded to that request. The decision was 'starred' and then went through the normal consultation procedures to obtain views as to whether or not the decision should be reported. At the date of the hearing before me on 24 June 1994, that consultation process was not complete and therefore the Chief Commissioner had not yet decided whether or not to report decision CU/170/92.

6. I regard this as a difficult case, particular bearing in mind the fact that the adjudication officer was only a few days late in submitting the appeal though 42 days is of course quite a lengthy period for making an appeal. I have ultimately decided that the reason given of waiting to see if decision CU/170/92 was to be reported does not constitute "special reasons" within regulation 7(2) of the Social Security Commissioners Procedure Regulations 1987. It would be well known to the Adjudication Officer that the consultation processes that take place before the Chief Commissioner can make a decision on reporting are prone to be lengthy. There was no real reason why the Adjudication

Officer should not have submitted his appeal in time and added that if there were an ultimate decision to report decision CU/170/1992 then possibly the appeal would be withdrawn. It was probably unrealistic to expect the Chief Commissioner's ruling on reporting decision CU/170/92 before the 42 days for appeal had elapsed or indeed for some period thereafter.

7. I have also borne in mind the submission made by Mr Prosser that the short delay in serving the appeal would not have prejudiced the claimant or those advising him, nor was there any question of evidence becoming unavailable. Mr. Prosser submitted that, as no harm had been done by the short delay, I ought therefore to admit the appeal. Those sorts of consideration are of course very relevant in deciding whether, for example, in a general context a time limit not bearing the restriction of "special reasons" should be extended. They are also relevant, for example, in ascertaining for example whether or not there should be an extension of the limitation period for bringing an action for damages for personal injuries. But here the expression used by the regulation is "special reasons", which does in my judgment require that there shall be something more shown than mere non-prejudice or the fact that a period of delay is only short. There must be something inherent in the delay which takes the case out of the ordinary and genuinely makes the delay, if not inevitable, highly excusable. I do not think the delay in this case comes within that category.

8. I also raised with the parties the decision of the Court of Appeal in Mehta v. Secretary of State for the Home Department [1975] 2 All E.R.1084, where the Court of Appeal pronounced on a time limit for an immigration appeal which allowed extension of time, "if the appellant authority ... is of the opinion that, by reason of special circumstances, it is just and right so to do" (SI 1972 No. 1684, Rule 11(4)). I should point out at once that that wording is not exactly the same as that of the regulation 7(2) of the Social Security Commissioners Procedure Regulations 1987 which refers only to "special reasons". Nevertheless I should observe that the Court of Appeal held that matters that should be taken into account under the Immigration Rule were the mistake of a Solicitor for the appellant in that case as to the date on which the appeal should have been made and also the potential merits of the applicant's case. I have borne those factors in mind in the present case. The question of mistake does not of course arise. The Chief Adjudication Officer is very familiar with the procedure for appealing to the Commissioner and with the procedure for obtaining a ruling of the Chief Commissioner as to reporting of a decision.

9. The other matter is the question of taking into account the merits or otherwise of the would-be appeal. I have borne in mind that there are problems over an apparent conflict between an unreported and somewhat short decision of a Commissioner on file CU/95/89 allowing an appeal by a police officer in similar circumstances and some of the other Commissioners' decisions, reported or otherwise. I also realise that decision CU/170/92 dealt with the matter in some detail. On the other hand, the

social security appeal tribunal in this case considered the matter very fully and gave a lengthy decision with elaborate reasons, relating among other matters to CU/95/89. It is clear to me that the tribunal took the utmost care and gave very detailed reasons for decision. Prima facie their decision was one which they were well able to reach on the facts and within the parameters of the case law. I am not of course finally saying what would have been the result of an appeal against their decision.

10. I therefore consider that, applying the tests in the Mehta case, I am not obliged to extend time in this case, particularly of course as an extension of time would mean that the claimant could possibly lose the benefit of a carefully reasoned social security appeal tribunal decision, unanimously in his favour.

11. Lastly, I should add that I do not consider the interposition of the Christmas and New Year holiday period during the 42 days constitutes "special reasons". Regulation 7(2) makes no provision to suspend the running of time for holiday periods, as it could have done. I therefore reject Mr. Prosser's submission that the holiday was a factor to be taken into account.

(Signed) M.J. Goodman
Commissioner

(Date) 12 July 1994