

JBM/SH/13/MD

Commissioner's File: CU/19/1985

C A O File: AO 4244/UB/1985

Region: London South

**SOCIAL SECURITY ACTS 1975 TO 1986  
CLAIM FOR UNEMPLOYMENT BENEFIT  
DECISION OF THE SOCIAL SECURITY COMMISSIONER**

**Name:** Kenneth Victor Scrivner

**Appeal Tribunal:** Kingston Upon Thames

**Case No:** 34/2

**1. My decision is:-**

- (a) that that part of the decision relating to the reclamation of Belgian unemployment benefit on account of United Kingdom supplementary benefit previously paid is erroneous in point of law in that the appeal tribunal declined to deal with the matter at the hearing. Accordingly as to that part of the decision of the appeal tribunal I set it aside and remit the case for hearing to a differently constituted appeal tribunal. I direct that this hearing be expedited;
- (b) that unemployment benefit is not payable from 7 May 1983 to 2 August 1983 (both dates inclusive) because the earnings factor derived from contributions of a relevant class paid by or credited to the claimant in the relevant year which ended on 5 April 1982 is less than 25 times the lower earnings limit for that year.

Social Security Act 1975, Schedule 3, paragraph 1(3) and the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975, regulation 14 and Regulation (EEC) No 1408/71.

2. This is an appeal by the claimant to the Commissioner with the leave of the Commissioner against the unanimous decision of the appeal tribunal disallowing the appeal against the decision of the adjudication officer. Accordingly on 17 December 1985 I held an oral hearing. The claimant was present and was represented by his wife Mrs Scrivner. The claimant also assisted in the debate. The adjudication officer was represented by Miss A V Windsor of the Solicitor's Office, Department of Health and Social Security. At the conclusion of the oral hearing in 1985 I directed that the points canvassed before me should be the subject of a written submission on behalf of the adjudication officer to be presented within 28 days. Accordingly accompanying a letter dated 6 January 1986 I received "notes of submissions" in accordance with my direction. The claimant made observations in respect of those notes dated 30 January 1985 and the adjudication officer now concerned made a further submission to me dated 25 March 1986. Mrs Scrivner on behalf of the claimant made further observations to me accompanying her letter dated 14 April 1986. There followed further correspondence on behalf of the claimant dated

11 June 1986 and 8 August 1986.

On 24 September 1986 I made the following direction:-

"I direct a further oral hearing.

Prior to the hearing I require:-

- (1) a full written submission of the claimant's proposed submissions as to all the issues in the appeal and
- (2) a full written summary of the Adjudication Officer's proposed submissions as to all the issues in the appeal.

Full and legible copies of all relevant forms to be referred to in each submission are to accompany each submission."

The claimant in response to my direction made submissions accompanying his letter dated 24 November 1986 and further submissions were put in on behalf of the claimant accompanying a letter dated 7 February 1987. The adjudication officer now concerned made a further submission in accordance with my direction dated 13 January 1987. I held a further oral hearing on 18 May 1987. The claimant was present. The claimant was represented by Mr J Luba of the Child Poverty Action Group. He was also represented by his wife Mrs Scrivner and he addressed me himself. The adjudication officer was represented by Mrs Reilly of the Solicitor's Office, Department of Health and Social Security assisted by Mr S A Allen the adjudication officer now concerned who also addressed me.

3. The facts are dealt with partly by reference in paragraph 2 of the submission dated 13 January 1987 of the adjudication officer now concerned on which the claimant and his advisers have had the opportunity to comment (and have in fact so commented) no useful purpose would be served by my setting out these matters afresh here.

4. The relevant law (both statutory and otherwise) is adequately set out in the submissions of the adjudication officer now involved in these appeals. Nothing is to be gained by my rehearsing that law here.

5. A preliminary point arises as to whether I remit the case to a differently constituted appeal tribunal for rehearing or give a final decision myself. I remit the question referred to in paragraph 1(a) of this decision to a newly constituted tribunal. I deal with myself the issue raised at (b) of paragraph 1 in this decision.

6. In his able address to me Mr Luba dealt with the issue raised at paragraph 1(a) of this decision, with the issues as to the period involved in this appeal and with the issue as to whether the adjudicating authorities (that is the adjudication officer, the appeal tribunal and the Commissioner) had jurisdiction to deal with the issue or whether it was an issue for the Secretary of State. Mrs Scrivner dealt with the issue of the EEC Regulations. The claimant's advocates adhered to the submissions put in on behalf of the claimant contained in the case papers and made in response to my direction dated 24 September 1986 save (and after discussion at the hearing) that the period in issue is that set out in paragraph 1(b) of this decision. Mrs Scrivner took me through at the oral hearing the EEC provisions. Mrs Reilly adhered to the submissions of the adjudication officer now concerned dated 13 January 1987 and made in response to my direction dated 24 September 1986 save that she accepted that the period in issue is the period set out in paragraph 1(b) of this decision. I deal in this paragraph with the issue dealt with in paragraph 1(a) of this decision that is the

reclamation of Belgian unemployment benefit on account of United Kingdom supplementary benefit previously paid. The claimant appealed on two counts and the reclamation issue is one of them. The appeal tribunal declined to deal with it. I have no information in the case papers which would enable me to have dealt with it myself at the hearing. Accordingly I can give no directions as to that aspect of this case apart from the direction which I give in paragraph 1(a) that the case should be expedited.

7. At the oral hearing on 18 May 1987 the period at issue was initially in dispute. However, after a measure of discussion both parties were in agreement that the period at issue is that set out in paragraph 1(b) of this decision and I need say no more on that aspect of this case. There is further no dispute that the Belgian reciprocal convention is not an issue in this case, neither is it disputed that the claimant cannot satisfy the United Kingdom unemployment benefit contributions unless Belgian insurance is taken into account.

8. In his able address to me Mr Luba dealt with the questions raised in paragraph 7 and 8 of this decision and also dealt with the question of jurisdiction as to whether the determination of the question of unemployment benefit should lie with the Secretary of State or was within the jurisdiction of the adjudicating authorities (including of course the Commissioner). I was referred in the course of the hearing to a number of decisions on this aspect of the case that of a Tribunal of Commissioners in R(G)1/82 and decisions CP/3/82 and CU/252/76. However, I have what I regard as direct authority on the issue in decision R(U)4/84 at paragraph 4 the relevant part of which is as follows:-

"The claimant neither paid nor was credited with any contributions in Great Britain during that tax year. It is accepted that unless he can count the contributions paid in West Germany he does not satisfy this condition. On the other hand it is accepted that, if contributions in West Germany can be counted, then the condition is satisfied. Thus once it is determined that West German contributions can or cannot be counted no contribution question arises. It is therefore accepted that, applying Decision R(G)1/82, it is for the statutory authorities (the insurance officer, the local tribunal and the Commissioner) to decide whether West German contributions can be counted; see reported decision R(S)13/85 at paragraph 5."

Accordingly in my judgment the question as to the claimant's satisfaction of the contribution conditions for unemployment benefit is a question to be decided by the statutory authorities.

9. I turn now as to the question whether the claimant can succeed in his claim for unemployment benefit under the provisions of the regulations of the EEC. In my judgment the claimant's Belgian contributions cannot be taken into account unless he had either first completed a period of insurance under United Kingdom legislation before claiming United Kingdom unemployment benefit, or failing this, secondly satisfies Article 71(1)(b)(ii) of regulation (EEC) No 1408/71. As to the question of credits awarded to the claimant by the United Kingdom for the first three months following his return to the United Kingdom when he received unemployment benefit at paragraphs 8 and 9 of the unreported decision of the Commissioner on file CU/285/1985 the Commissioner deals specifically with the relevance of credits and expresses his view that the "competent State" is the state of last employment. In my judgment Belgium was the competent State for the purposes of considering the application of Articles 67 and 71 in the instant case. The award of credits does not in my judgment bring the claimant's within the provisions of Article 67(3). Accordingly in my judgment the claimant has not shown that he was insured in accordance with the United Kingdom legislation before he claimed unemployment benefit for the purposes of Article 67(3). The question that next falls for consideration is whether the claimant falls within the alternative conditions of Article 71(1)(a)(ii) and (b)(ii) and so satisfies Article 67. In my judgment the claimant does not satisfy Article 71(1)(a)(ii). The claimant can only satisfy Article 71(1)(b)(ii) if he can show that he was habitually resident in the United Kingdom during his last employment in Belgium. In my judgment the claimant

has failed to show that he was habitually resident in the United Kingdom during the 4½ years he lived and was employed in Belgium and so does not come within the provisions of Article 71(1)(b)(ii) in order to benefit from Article 67. I would add that the adjudication officer now concerned has set out his detailed reasoning in and by reference to his submission dated 13 January 1987 to me in accordance with my direction of 24 September 1986 and Mrs Reilly adhered to the written submissions of the adjudication officer now concerned at the oral hearing save that the period at issue is that set out in paragraph 1(b) of this decision. I adopt accordingly the reasoning of the adjudication officer now concerned as set out in his written submissions and see no grounds for setting them out afresh here. Accordingly the claimant in my judgment cannot succeed in his claim to unemployment benefit under the provisions of the regulations of the EEC and the question as to the claimant's satisfaction of the contribution conditions for unemployment benefit is a question to be decided not by the Secretary of State but is one for the statutory authorities and my decision on this aspect of the case is as set out in paragraph 1(b) of this decision. I would only add that as to the question of the issue of forms, forms issued by member States of the EEC are in my judgment not of themselves sufficient to establish title to benefit. In my judgment forms are issued containing information on a claimant's circumstances and do not relieve any such claimant of the necessity of satisfying the requirements of the provisions governing entitlement to benefit.

10. Accordingly, except to the extent aforesaid, the claimant's appeal is dismissed. I would add as to paragraph 1(a) of this decision that I have in the case papers no information on which to base any directions as to the disposal of this claim of the claimant. It was apparently before the appeal tribunal as they declined to deal with it. It is the subject matter of the claimant's appeal. It is clear that this claim should now be dealt with as expeditiously as possible and, but as to paragraph 1(a) of this decision only, should any questions arise as to the implementation of paragraph 1(a) I retain this aspect of the case.

(Signed) J.B. Morcom  
Commissioner

Date: / 10th June 1987