

JM/SH/2

Commissioner's File: CU/020/1991

SOCIAL SECURITY ACTS 1975 TO 1990

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. This is a claimant's appeal, brought by leave of the chairman of the social security appeal tribunal, against a decision of that tribunal dated 15 October 1990 which varied (but in a manner of no practical avail to the claimant) a decision issued by the adjudication officer on 10 July 1990. My own decision is that the aforesaid decision of the appeal tribunal is not erroneous in point of law.

2. The claimant is a married woman, now aged about 34. The case concerns her entitlement to unemployment benefit in respect of the final fortnight or so before she left England so as to accompany her husband, a serving member of the Armed Forces, on his posting to Germany. Unsurprisingly, a number of such cases have come before the Commissioner in recent years. Indeed, in R(U) 2/90 a Tribunal of Commissioners considered just such a case. (I am not, of course, suggesting that the facts of that case were identical to the facts of this case.) The claimant's representative had submitted reasoned written arguments in the claimant's favour. I knew that the claimant was still in Germany; but the essential facts were not seriously in dispute. The representative lives in Tyne and Wear. I was anxious that he should be allowed the opportunity of orally expanding his arguments. Accordingly, I directed an oral hearing of the appeal, to be held - if possible - in Liverpool. It did prove so possible. I heard the appeal in Liverpool on 24 March 1992. The claimant was ably and pleasingly represented by Mr F Kirkland, a financial advisor who told me that he was both a friend and a colleague of the claimant. Mr Kirkland clearly enjoys expertise in the sphere of financial services; but he frankly disowned any legal qualifications. Nevertheless, his arguments were tenaciously and attractively presented. The adjudication officer was represented by Mr R L Dowdall, of the Office of the Chief

Adjudication Officer. I am grateful, too, for the carefully prepared assistance which I received from Mr Dowdall.

3. It is clear that the claimant is conscientious and industrious. I was told - and accept - that, until the events with which this decision is immediately concerned, she had always been in employment and had never before claimed unemployment benefit. Her last job in this country was that of sales correspondent in Washington, Tyne and Wear. That job lasted from 20 February 1989 until 8 June 1990 (which was a Friday). She voluntarily gave up that job at that time for two reasons:

- (a) She wished, naturally, to have time in which to help pack up and generally prepare for the move to Germany.
- (b) Equally - if not more - importantly, she wished to attend a two weeks' training course with F. Kirkland Associates of Birtley, an organisation run by Mr Kirkland, her representative before me.

At the relevant time, the claimant spoke no German. She realised that, with that disability, she would find difficulty in putting to practical use in Germany her previous working experience. She hoped to find employment in the field of financial advice. As the wife of a British serviceman stationed in Germany, she would be subject to British law - and, in particular, to the provisions of the Financial Services Act 1986 in respect of those offering advice upon financial matters.

4. There is no doubt but that documents in the papers display varying statements by the claimant as to the precise time which she would spend upon the training course. For example, in a short statement signed in early June 1990 she said that she would be training between, 10 am and 2 pm, on 12 and 13 June. In a statement signed on 21 June 1990 she wrote:

"Unpaid training in compliance and terminal aspects of financial services started Mon 11th June.

Training was part and full days for 2 weeks. 2 weeks training was the minimum specified by the training company."

In a letter dated 2 July 1990 and written from Germany the claimant wrote: "This training that I did was a few 1/2 days during 8 June-24 June."

5. But, of course, Mr Kirkland himself was in an excellent position to tell me about the course which the claimant attended. I am left in little doubt but that it was, indeed, a two weeks' course - but tailored to meet the other demands which were then being made upon the claimant's time. In other words, there was the utmost flexibility as to both the hours of the day and the day of the week in which the training was given. I quote from my note of what Mr Kirkland told me:

"I agreed a period of flexible training, commensurate with

her packing up responsibilities. It was her avowed intention to be employed in Germany, not unemployed."

Mr Kirkland added that he knew that the claimant should remain available for employed earner's employment within the meaning of the legislation relating to unemployment benefit. Indeed, a substantial part of both the papers and of what Mr Kirkland said to me was devoted to establishing that -

- (a) the claimant had, throughout the course, an unwavering intention of accepting any remunerative employment that came her way, and
- (b) there would have been no difficulty in her abandoning the course in order to perform such employment.

6. I have endeavoured to look in the light of reality at a situation the artificiality of which was, I am quite sure, dictated by an attempt (by no means contemptible) to allow the claimant to derive what she and Mr Kirkland perceived to be the utmost advantage from the relevant legislation. That attempt was, in my view, doomed to failure. In the first place, there could be no question in this case of "exporting" to Germany any entitlement to unemployment benefit; for four weeks of registration as an unemployed person is now a prerequisite of exportability. In the second place, the claimant was vulnerable to one or other of the prongs of a Morton's fork. I explain:

- (a) In early June 1990 she had a perfectly good job and was under no pressure from her employers to relinquish it.
- (b) She gave up that job with the highly commendable motive of undergoing training which would improve her prospects of obtaining employment in Germany. She also required time in which to pack up for the move from England.
- (c) The appeal tribunal, differing from the local adjudication officer on this aspect of the case, found that the claimant did have just cause for voluntarily leaving her employment when she did. But it seems clear beyond peradventure that the appeal tribunal would not have so found if it had considered that the claimant attached so little importance to her training course that she would have been prepared to abandon it altogether had a (necessarily) brief period of remunerated employment presented itself.
- (d) The claimant cannot, accordingly, urge in one and the same breath that she had just cause for leaving her employment but remained, nevertheless, available for employment. The two cannot, in the context of this case, hang together.
- (e) Manifestly, if the claimant had really felt that, in the inclusive period from 11 to 23 June 1990,

remunerated employment could be fitted in alongside her packing up and/or her training course, she would have stayed in the secure job which she already enjoyed.

I have no hesitation, accordingly, in endorsing the appeal tribunal's conclusion that the claimant is not, in respect of the inclusive period from 11 to 23 June 1990, entitled to unemployment benefit, for the reason that she was not in that period available for employment. The alternative is, of course, that if she had been available for employment she would have fallen for disqualification by reason of having left her employment without just cause.

7. Both Mr Kirkland and Mr Dowdall addressed me with detailed reference to the criteria applicable to "availability". Discussed were such aspects as the active seeking of work and the degree to which availability can be a passive state. The respective submissions were interesting - but I see no need to consider them here. As I have explained above, I see no way in which this claimant can plausibly have it both ways. As I have said, if she was available for work, then she did not have just cause for leaving her settled employment. The appeal tribunal explained all that with admirable clarity. I can find no error of law in its decision.

8. Happily, the claimant has no cause to regret her actions in June 1990. Mr Kirkland told me that when she got to Germany she did, indeed, find employment there. I am sure that, upon reflection, the claimant will account that of more lasting value than a few days of unemployment benefit.

9. The claimant's appeal is disallowed.

(Signed) J. Mitchell
Commissioner

(Date) 10 April 1992