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Commissioner's File: CU/73/1988

**SOCIAL SECURITY ACTS 1975 TO 1986**

**CLAIM FOR**

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

Name: A. D. B (Mrs)

Appeal Tribunal: Grimsby

Case No: 005/12

1. My decision is that the decision of the social security appeal tribunal given on 17 September 1987 is erroneous in point of law and accordingly I set it aside. I direct that the case be reheard by a differently constituted tribunal, who will have regard to the matters referred to below.

2. This is the claimant's appeal against the decision of the social security appeal tribunal of 17 September 1987, leave having been granted by a Commissioner.

3. The claimant was employed as a civilian HGV driver at the RAF station in Uxbridge from 12 May 1986 to 29 August 1986, when she terminated her employment. She was then seven months pregnant. Her employers stated that she had left because of her pregnancy and that her employment otherwise would have lasted for at least another six weeks. The claimant explained her reasons for leaving as follows:-

"My husband who is a serving member of the of the RAF was posted from RAF Uxbridge to RAF North Cotes. When I put my notice in at Uxbridge we had no date of posting so my supervisor put down pregnancy as I intended to work further on into my pregnancy than I did. Then when I told my supervisor that our posting date had come through for 26 September 1986 ... I had no alternative to finish my job as my husband was posted and I wanted to carry on living with him."

4. In reply to further enquiries the claimant stated that they had first been advised that they were moving to RAF North Cotes on 31 July 1986. They actually moved on 23 September 1986. She further stated "from leaving work on 29.8.86 until arriving at North Cotes, I was packing up my house and cleaning it ready to hand back to the RAF".

5. The claimant claimed unemployment benefit on 1 September 1986. In the light of the evidence the adjudication officer disqualified the claimant for receiving unemployment benefit for the inclusive period from 23 September 1986 to 14 October 1986 on the ground that the claimant had voluntarily left her employment without just cause within the meaning of section 20(1)(a) of the Social Security Act 1975, as amended ("the Act"). Thereupon the claimant appealed to the tribunal.

6. The claimant and her representative attended the hearing of the appeal before the tribunal on 17 September 1987. In the event the tribunal allowed the appeal in part. The decision reads:-

"Appeal disallowed - just cause not shown.

Claimant disqualified for receiving unemployment benefit - discretion exercised - claimant required one week to prepare for removal disqualification from 23 September 1986 to 7 October 1986."

7. Regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986 provides that every tribunal chairman shall include in the record of the decision a statement of the reasons for such decision and of the findings on questions of fact material thereto. In the present case the findings of fact and reasons for the decision give no indication that adequate consideration was given to the relevant legislation. Further, no reasons were recorded as to why the tribunal imposed the period of disqualification which they did or what evidence was considered to establish the period of disqualification to be imposed. In Decision R(U) 4/87 (paragraph 11) the Commissioner stated on this point:-

"It is likely the tribunals will be held to have erred in law if they do not indicate in their decisions (a) that they have consciously exercised the discretion in imposing disqualification; and (b) stated the facts that they have taken into account in exercising it."

The tribunal's decision was erroneous in law. I should put on record that the adjudication officer now concerned supports the appeal on this ground.

8. Under section 20(1)(a) of the Act, a person shall be disqualified for receiving unemployment benefit for such period not exceeding six weeks (now 13 weeks) if she voluntarily left her employment as an employed earner without just cause. It is not in dispute that the claimant voluntarily left her employment; the question at issue is whether or not she did so with just cause.

9. Now, although the claimant was free to leave her employment in the way she did, nevertheless if she wishes to avoid disqualification for receiving unemployment benefit for a period

after so leaving, she has to show that she was justified in bringing on herself in the manner that she did the misfortune against which she was insured. In Crew and the Assistant Masters and Mistresses Association v. The Social Security Commissioner (a Court of Appeal decision published as an annexed to Decision R(U) 3/81) which concerned a teacher who had voluntarily retired, the then Master of the Rolls (Lord Denning) reviewed the various relevant Commissioners decisions relating to what constitutes "just cause" within the meaning of section 20(1)(a). He stated the following propositions:-

1. When a man voluntarily leaves his employment, he is disqualified for receiving unemployment benefit for 6 weeks, [now 13 weeks] unless he proves - and the burden is on him to prove - that he had just cause for leaving his employment.
  2. It is not sufficient for him to prove that he was quite reasonable in leaving his employment. The reasonableness may be "good cause", but it is not necessarily "just cause".
  3. "Without just cause" means without any just cause referring on to the Unemployment Fund the payment of unemployment benefit."
10. Disqualification of a married woman for voluntarily leaving her employment is subject to regulation 8 of the Married Women and Widows Special Provisions Regulations 1974 which provided at the relevant time that for the purposes of the disqualification provisions the test for married women "shall be determined on the same basis as that applicable to a single woman, but not so as to exclude such consideration of the responsibilities arising from her marriage as is reasonable in the circumstances of the case".
11. The tribunal did not have the benefit of the Tribunal of Commissioners Decision CU/193/87 which considered the position of "service wives" in similar circumstances. The decision affirmed the proposition that a service wife may establish "just cause" provided that she leaves her employment no earlier than is reasonably necessary in order to arrange her own and her family's affairs (paragraph 12), but it illustrates the consequent difficulty of establishing availability for employment.
12. In her grounds of appeal the claimant stressed that she was obliged to terminate her employment because her husband had been transferred to another posting. While this is of course correct, the question for decision is whether the claimant had just cause for terminating her employment at the date she did or whether she should have continued her employment until a date nearer to the date of actual departure. The new tribunal should investigate all the evidence afresh, and have particular regard to the following: the date when they were first advised of the transfer to RAF North Cotes and was any provisional date given; the date when they were advised of the actual date of transfer; the date

of departure; the claimant's state of health; the period, if any, she required to prepare for the transfer and whether she could have continued in her employment undertaking night duties until a date nearer the date of actual departure. The date of birth of the claimant's baby should also be noted. If the new tribunal conclude that the the claimant did not have just cause for terminating her employment on 29 August 1986, they should proceed to consider the period of disqualification to be imposed and give reasons for imposing such period. If the new tribunal conclude that the claimant did have just cause for terminating her employment when she did, they should consider whether she was available for employment in terms of section 17(1)(a)(i) of the Act, having regard to her domestic commitment prior to leaving. Although unemployment benefit was paid for the inclusive period from 4 September 1986 to 22 September 1986, this of course is not conclusive that she was willing and able to accept at once any offer of suitable employment.

13. The claimant is somewhat confused with regard to the period at issue. The adjudication officer disqualified the claimant for receiving unemployment benefit for the inclusive period from 23 September 1986 to 14 October 1986. Pending further investigation the Department of Employment for reasons of administration suspended payment of unemployment benefit for the inclusive period from 23 September 1986 to 3 November 1986. The tribunal varied the period of disqualification and substituted the inclusive period from 23 September 1986 to 7 October 1986. As the new tribunal will consider afresh the claimant's appeal from the adjudication officer's decision, it follows that the inclusive period in issue is from 23 September 1986 to 14 October 1986.

14. There can be no question of my giving the decision the tribunal should have given in that there are questions of fact which have yet to be resolved and these fall within the exclusive jurisdiction of the tribunal. The tribunal that rehears this case should ensure that the material facts and the reasons on the findings on the above points and all other relevant points raised by or on behalf of the claimant or adjudication officer are recorded by the chairman in accordance with the statutory requirements. A copy of the said Tribunal of Commissioners Decision CU/193/1987 should be included in the case papers and the adjudication officer should submit a further written submission to the tribunal in the light of that decision.

15. The claimant's appeal is allowed and I give the decision set out in paragraph 1.

(Signed) R.F.M. Heggs  
Commissioner

(Date) 6 April 1990