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Commissioner's File: CU/149/1985

C A O File: AO 4378/UB/85

Region: London

SOCIAL SECURITY ACTS 1975 TO 1984

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: ~~Graham Burlem~~

Appeal Tribunal: Harrow

Case No: 12/7

1. This is a claimant's appeal, brought by my leave, against a decision of the social security appeal tribunal dated 18 March 1985 which confirmed a decision issued by the adjudication officer on 24 October 1984. My decision is that the claimant is not disqualified for receiving unemployment benefit from 23 May 1984 to 11 July 1984 and from 13 July 1984 to 15 October 1984 (all dates included) because, although his claims for those periods made on 16 October 1984 were not made within the time limit set out in regulations, he has proved that there was continuous good cause for his delay in making the claims.

2. The claimant is now aged 39. He became unemployed on 23 May 1984 after, apparently, about 10 months of self-employment. Prior thereto he had worked as an estate agent until July 1983. Although the papers are nowhere explicit on the issue, it seems that his work as an estate agent constituted employed earner's employment. On 16 October 1984 he made a claim for unemployment benefit. At the same time he made a delayed claim in respect of the period to which I have referred in paragraph 1 above. Again, the papers are not explicit on the issue - but it would appear that his claim for unemployment benefit as from the date of claim was successful. Be that as it may, it is quite clear that his delayed claims were rejected on the grounds that he had not demonstrated good cause for his delay.

3. On the date of the claims the claimant wrote the following on Form UB 591:

"There was a natural reluctance and inhibition about signing on further enhanced by a friend telling me that one could not sign on if one had been self-employed. I did not check this out but only discovered it to be wrong when correctly advised by your colleagues when filling out other forms. I regret the delay and further the inconvenience for a belated claim but do feel the request is justified."

4. Before the appeal tribunal the claimant produced a letter from a chartered accountant which opened thus:

"Further to recent discussions, I am now writing to confirm that in May 1984, I advised you that in my opinion you were not entitled to claim Unemployment Benefit following the cessation of your self-employed business situation....., as this benefit was not available to self-employed people."

The claimant is recorded as having said this in evidence before the appeal tribunal:

"I worked as Estate Agent until July 1983. I became self-employed within an organisation until May 1984. My accountant at the time of my ceasing self-employment said that I was not entitled to claim Unemployment Benefit and I accepted this advice as being correct. When I failed to get another job and my savings were coming to an end I went to the Unemployment Benefit Office to see if there was anything to which I was entitled and I was then advised that I could claim Unemployment Benefit."

5. The appeal tribunal accepted the claimant's account of the matter. It disallowed the claimant's appeal, however. It took account of a number of early decisions of the Commissioner in which it had been held that good cause for delay had been established where the claimant had acted upon erroneous advice tendered by a solicitor. But it distinguished those cases on the ground that it did not accept that "an accountant is qualified to interpret the law in the same way as a Solicitor was recognised to be" in those cases.

6. Since the appeal tribunal hearing a number of further documents have been added to the papers. The claimant's representative approached the Institute of Chartered Accountants. On 4 April 1985 the Secretary to the Parliamentary and Law Committee of that Institute wrote emphasising that, although he personally was not familiar with the law of national insurance, it did seem to him that "on the face of it, misleading advice from a Chartered Accountant should be treated on the same footing as misleading advice from a solicitor". He considered that in both cases it would be reasonable for a client to rely upon the advice which he received. On 2 October 1985 the chartered accountant himself wrote to the claimant's representative. I quote the second paragraph of that letter:

"in reply to your request, although I would like to consider the majority of my client's as friends, it would be true to say that in this instance my relationship with [the claimant] is on a purely professional basis. He was introduced to me many years ago by a mutual acquaintance and my records indicate that I have been advising him periodically since January 1978."

7. I need not expatiate at length upon the case law which has accumulated in respect of the meaning of "good cause". For my part,

I have always considered that the issue boils down to this: Has the person concerned done or omitted what can reasonably be expected of him having regard to his rights and duties under the social security scheme? How, then, does this claimant stand up to that test?

8. I cannot see that in this context any hard and fast rule can be laid down in respect of either solicitors or accountants. Each case turns upon its own circumstances. It is within my own knowledge, obtained as a Commissioner, that accountants do give advice to clients, both individuals and limited companies, in respect of national insurance matters. Conversely, there must be many solicitors who would not hold themselves out as having any expertise in that field. In the case before me it is clear that the relevant chartered accountant felt confident to advise the claimant in respect of his entitlement to unemployment benefit - and did so advise him. Indeed, the advice given was correct so far as it went. It simply did not go far enough - for the accountant had overlooked the effect of the claimant's earlier period in employed earner's employment upon the somewhat complex contributions provisions. In my view it was, in all the circumstances of this case, reasonable for this claimant to rely upon that advice.

9. In Decision CS 50/50 (KL) (one of the decisions to which the appeal tribunal expressly referred), no attempt was made to put solicitors into any class of their own. Paragraph 9 of that decision reads:

"In the circumstances explained, in order to prove good cause for delay in making his claim, it is enough for a claimant to show that he took reasonable steps to ascertain his rights by obtaining the advice of a person qualified to advise him and that the delay was due to his acting on that advice. This the present claimant has shown."

As I have indicated in paragraph 8 above, I consider that this claimant meets that test.

10. The adjudication officer now concerned contends (in paragraph 14 of her submission) that a distinction should be drawn between the case of a claimant who can show that he had regularly relied on advice from his accountant and a claimant who does not regularly seek the advice of an accountant. I must confess to being at something of a loss to see the force of that. As I have said, each case must be examined in the light of its own particular facts. I cannot myself see why a claimant should be prejudiced in this field simply because the misleading advice which he had obtained from an accountant was given upon the first occasion upon which he had consulted that accountant. In any event, as can be seen from the letter which I have quoted at the end of paragraph 6 above, this accountant had been advising this claimant "periodically since January 1978".

11. Quite justifiably the adjudication officer now concerned draws my attention to the fact that the claimant had been, to some extent, influenced by "a natural reluctance and inhibition about signing on" (see paragraph 3 above). But on Form CA026 the claimant has written:

"I further wish to state most clearly that I was advised by [the accountant] that I would not be entitled to unemployment benefit and that was the main factor for not claiming it."

He follows that passage by emphasising his lifelong desire to try to stand on his own feet - and by asking the Commissioner "not to hold that aspect of [his] character against [him] in these circumstances". I feel able properly to accede to that request. I am satisfied that the incomplete advice which the claimant received from his accountant was the predominant factor in the delaying of his claim. The papers furnish no details of the conversation which led up to the incomplete advice. The probability must surely be, however, that it was the claimant who first raised the topic of unemployment benefit - and that, had the claimant received adequate advice on the topic, he would have, with reasonable despatch, called at the unemployment benefit office in order to obtain clarification of his contributions position.

12. As I have indicated in paragraph 2 above, I am not in possession of sufficient information to permit me to make an award to the claimant. The adjudication officer will, of course, re-examine the situation in the light of the decision which I have given in paragraph 1 above.

13. The claimant's appeal is allowed.

(Signed): J Mitchell
Commissioner

Date: 17 December 1985

SOCIAL SECURITY ACTS 1975 TO 1985
CLAIM FOR UNEMPLOYMENT BENEFIT
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: James Brown Gardener

Appeal Tribunal: Sunderland

Case No: 10/2-

[ORAL HEARING]

1. This claimant's appeal succeeds. My decision is that payment of unemployment benefit from 1 August 1984 to 30 April 1985 (both dates included) is not precluded by regulation 7(1)(d) of the Social Security (Unemployment Sickness and Invalidity Benefit) Regulations 1983 [SI 1983 No. 1598] ("the 1983 Regulations").
2. This claimant's appeal was heard at the same time as the adjudication officer's appeal the reference to which on Commissioner's file is CU/214/1985. I shall call my decision on that appeal "my first decision" and my decision on the present appeal "my second decision". A copy of my first decision accompanies this, my second decision, which should be read with it. The claimant did not attend. He was represented by Mr A.J. Hows who represented the claimant in both appeals. The representative of the adjudication officer was the same in both cases.
3. The claimant in this appeal was born on 25 January 1921. From 8 November 1976 to 31 July 1984, the claimant was employed as an instructional officer for the Manpower Services Commission. He was compulsorily retired on redundancy terms on 31 July 1984. Since he had less than 10 years service, he would have been entitled to 12 months notice: see paragraph 9032 of the Establishment Officer's Guide, which is quoted in paragraph 14 of my first decision. He was given notice by a letter dated 17 May 1984 which is in the same form as that set out in Part 2 of the Second Appendix to my first decision save that the retirement date is 31 July 1984 and the untaxed payment is stated to be for the period 1st August 1984 to 30th April 1985. The claimant signed a similar declaration to that set out in Part 3 of the Second Appendix to my first decision accepting that he would go on 31st July 1984. On termination of his employment the claimant received a lump sum (£2647.31 increased to £2497.59) and a pension (£822.44 per annum - later increased-) under the Principal Civil Service Pension Scheme, a compensation payment of £874.93 (apparently paid by analogy with the Redundancy Payments Act) and "a sum equivalent to the salary he would have received had he remained in the Civil Service until 30.4.85 abated by any pension in payment during the period". The actual amount of this sum, which is that to which the appeal relates, is not in evidence. I shall call it "the sum in dispute". There is no doubt that it was paid in accordance with Memo 510/85, a copy of which is set out in the First Appendix to my first decision. The relevant paragraph in the present appeal is 3a, since the claimant had less than 10 years reckonable service.
4. By a decision issued on 13 September 1984 an adjudication officer decided that unemployment benefit was not payable for 1st August 1984, by reason of regulation 7(1)(d)

of the 1983 Regulations and imposed a forward disallowance in respect of days falling in the period 2 August 1984 to 30 April 1985. The claimant appealed against this decision to a social security appeal tribunal which on 15 February 1985 unanimously disallowed his appeal.

5. The chairman refused leave to appeal against this decision. I granted leave to appeal commenting:

"The tribunal has found no facts".

There was a clear failure to comply with the express obligation imposed by regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984 which requires the chairman of the tribunal to "include in the record of every decision a statement of the reasons for such decision and of their findings on questions of fact material thereto..". This is not an unnecessary or trivial requirement. If adjudication officers' decisions are affirmed without any effort by the appeal tribunal to find the material facts and the reasons for their decision consist (as they did in the present case) in mere repetition of the words of the relevant regulation, the claimant is left guessing as to why the case has gone against him; and the tribunal lays itself open to the accusation that it is acting as a rubber stamp for the adjudication officer.

6. I would have set the decision aside, in the exercise of my discretion, and remitted the case to another tribunal, completely differently constituted, so that the claimant should have a hearing in accordance with the regulations, if the claimant had wished for this course. But both his representative and that of the adjudication officer asked me to decide the case on its merits and this I now do.

7. The sole issue in this case is whether the sum in dispute was a payment in lieu of notice or of remuneration in terms of regulation 7(1)(d) of the 1983 Regulations or whether it was a redundancy payment. The claimant in this case received just under 11 weeks' notice (17 May 1984 to 31 July 1984) which he worked out. He received 9 months' pay (1st August 1984 to 30 April 1985) abated by his pension for that period. It is this which is the sum in dispute.

8. In my judgment, for the reasons given in my first decision, my conclusion in this my second decision is the same namely that the sum in dispute was not a payment in lieu of notice or of remuneration in terms of regulation 7(1)(d) but was, instead, a redundancy payment which does not fall within the terms of regulation 7(1)(d) at all.

9. My decision is set out in paragraph 1.

(Signed) V G H Hallett
Commissioner

Date: 7 August 1986