

VGHH/BOS

C U 205/1984

SOCIAL SECURITY ACTS 1975 TO 1982

CLAIM FOR UNEMPLOYMENT BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Rosemary Ann Feeney (Mrs)

Local Tribunal: North Staffordshire

Case No: 68/1

1. This appeal fails. My decision is:

- (1) unemployment benefit is not payable in respect of the following days in 1983: 15 June to 22 June; 25 June to 29 June; 2 July to 6 July; 9 July to 13 July; 16 July to 20 July; 23 July to 27 July; 8 August to 10 August; 13 August to 17 August; 20 August to 24 August; 27 August to 31 August; 3 September to 7 September and 10 September (all dates included) because there is a recognised or customary working week in connection with the claimant's employment, she did not work on those days, she does not ordinarily work on every day in a week and she was employed to the full extent normal in her case in the weeks in which these dates fall [Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975, regulation 7(1)(e) and (2)];
- (2) if any further claim is made in respect of a Monday, Tuesday, Wednesday or Saturday falling in the period 12 September 1983 to 11 September 1984 (both dates included) and on that day the grounds of this decision have not ceased to exist, this decision is to be treated as a disallowance of that claim [Social Security (Claims and Payments) Regulations 1979, regulation 12(5)].

2. The facts are not in dispute in this case. The claimant, a married woman aged 31, was employed full-time (Monday to Friday) from 14 September 1981 as an ancillary worker by Tesco Stores Ltd. On 11 May 1983 she was notified that due to the company's decision to change the filling operation within the store and to cease to operate the "twilight shift" with effect from 20 May 1983 she was declared redundant from this date. It was however also explained that the company were in the process of recruiting a "17 hour shift" and that she should inform a named member of staff if she wished to be considered for a vacancy. The claimant successfully applied for such a vacancy, and recommenced employment with the company on Thursday 26 May 1983. On 27 May 1983 she was issued with a fresh

contract of employment showing her hours of work as 17 a week. Since that date she has worked on Thursdays and Fridays only. From 23 May 1983 she claimed unemployment benefit and benefit was paid to her from 28 May 1983 to 14 June 1983 inclusive. However on 13 September 1983 a local insurance officer decided that unemployment benefit was not payable for the days referred to in paragraph 1(1) above and imposed a forward disallowance for the period referred to in paragraph 1(2) above on the ground that regulation 7(1)(e) of the above mentioned Regulations applied to the claimant. A local tribunal affirmed this decision on appeal and the claimant, with the leave of the chairman of that tribunal, now appeals to the Commissioner.

3. The adjudication officer now concerned, in a careful submission, has pointed out that prior to being made redundant from her full-time employment on 20 May 1983 the claimant had had a continuous history of full-time (5-day week) employment dating back to September 1979. She had previously worked part-time between 1976 and 1979, but has explained that she was unable to work full-time during this period because of her young daughter. Her daughter is now approximately 12 years old, and the adjudication officer submits that there is no reason to dispute the claimant's statement that she has taken steps to seek full-time work, and would readily give up her part-time job were she successful in obtaining it. Tesco have however confirmed that the present part-time arrangement is on their part intended to be permanent and that there is no foreseeable prospect of them being able to offer the claimant full-time employment again. On the other hand, the adjudication officer submits that work as a general assistant is not a type of employment in which a normal full week's work is work for no more than part of the week. Nevertheless, the claimant applied for a part-time vacancy on being made redundant, fully aware that, if she were successful in obtaining a vacancy, she would be employed for only 2 days a week. Having regard to all the circumstances, the adjudication officer submits that it is for consideration whether it could be said that during the period at issue in this appeal (which began 3½ weeks after her full-time employment terminated) the claimant was a person who ordinarily worked on only 2 days a week. If I decide that the claimant could not properly be held to be a person who ordinarily worked on only 2 days a week, the adjudication officer invites me to reverse the local tribunal's decision and to revoke the forward disallowance imposed under regulation 12(5) of the Social Security (Claims and Payments) Regulations 1979 in respect of Mondays, Tuesdays, Wednesdays and Saturdays in the inclusive period 12 September 1983 to 11 September 1984.

4. If, however, I decide that during the period at issue the claimant was "a person who does not ordinarily work on every day in a week", and that the full normal extent of her employment was 2 days a week, the adjudication officer submits that the question then arises whether she was employed to the full extent normal in her case in the weeks in which the dates at issue fell. Under Schedule 20 to the Social Security Act 1975 "week" is defined as a period of 7 days beginning with midnight between Saturday and Sunday.

The evidence is that in each week from week commencing 12 June 1983 to week ending 10 September 1983 the claimant worked on the 2 days (Thursday and Friday) provided for her under her contract of employment except in week ending 6 August 1983 when she was sick on Thursday 4 August 1983 and Friday 5 August 1983. The claimant claimed and received sickness benefit from 30 July 1983 to 5 August 1983 (both dates included). The adjudication officer therefore submits that in each of the weeks which included the days at issue in this appeal the claimant was employed to the full extent normal in her case and that regulation 7(1)(e) prevents those days from being treated as days of unemployment. As at 5 March 1984 (the last day for which the adjudication officer has information) the claimant was continuing to work on Thursdays and Fridays and to claim unemployment benefit for non-working days and I am invited to confirm the forward disallowance imposed for Mondays, Tuesdays, Wednesdays and Saturdays in the inclusive period 12 September 1983 to 11 September 1984.

5. I am satisfied that the claimant could not properly be held to be a person who ordinarily worked on only 2 days a week. But I cannot accept the adjudication officer's invitation to reverse the local tribunal's decision on this ground, which is effectively that which forms the basis for the claimant's appeal. The fact that the claimant did not ordinarily work on only 2 days a week does not prevent regulation 7(1)(e) from applying. That regulation will apply to any day if the claimant "is a person who does not ordinarily work on every day in a week (exclusive of Sunday or the day substituted for it by regulation 4)": see the wording of the regulation which is set out in paragraph 5 of the adjudication officer's submission. Thus the regulation will not apply to a person who ordinarily works a six day week. But the claimant ordinarily worked a five day week. There is no evidence that she has ever ordinarily worked a six day week (i.e. every day of the week except Sunday). Accordingly, Decision C(U) 518/49 does not assist the claimant because she has never worked every day of the week in terms of regulation 7(1)(e). It may well be said that this provision, which was introduced when a full-time worker worked a six day week is in need of amendment now that, for many years, a five day week has been normal for a full-time worker; since the object of the regulation is to prevent part-time workers from obtaining unemployment benefit for those days when they would not in any case be working and a five day worker cannot now be regarded as a part-time worker. But I must apply the regulation as it stands, from which it follows, for the reason already given, that the claimant cannot escape from its application under the provision set out in inverted commas in this paragraph.

6. There is no doubt that regulation 7(1)(e) is not excluded by regulation 7(2), which is set out in paragraph 5 of the adjudication officer's submission to me because when the claimant commenced her part-time employment it was formally arranged under the terms of her contract of employment that she would work on Thursday and Friday of each week and this arrangement has been followed. There is accordingly a recognised working week in connection with the claimant's employment. It is then necessary to consider (a) whether the claimant was a person who did not ordinarily work on every day of the week exclusive, in this

case, of Sunday and (b) whether the claimant was employed to the full extent normal in her case. The two conditions are independent: see Commissioner's Decision R(U) 1/72. The claimant was, as explained in paragraph 5 above, a person who satisfied condition (a). As regards condition (b) the full normal extent of the claimant's employment was 2 days a week and the claimant was clearly employed to the full extent normal (i.e. 2 days, namely Thursday and Friday) in the weeks in which the days in issue (which are specified in paragraph 1(1) above) fell. She was working as provided for, in her contract of employment. Each week in issue was one in which she was accordingly employed to the full extent normal in the claimant's case. On this aspect of the case, as well as on the question of forward disallowance, I am entirely in agreement with and adopt the reasoning of the adjudication officer now concerned.

7. It follows that the decision of the local tribunal was correct and that this appeal must be dismissed. My decision is set out in paragraph 1.

(Signed) V G H Hallett
Commissioner.

Date: 10 August 1984

Commissioner's File: C.U. 205/1984
C I O File: I.O. 3108/UB/84
Region: Midlands